

In the Matter Of:

COLLEEN BEHM vs

MACK TRUCKS, INC.

KAITLYN O'NEILL

March 23, 2022



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1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 * * *

4 COLLEEN BEHM, : NO. 21-2500
5 Plaintiff :
6 vs. :
7 MACK TRUCKS, INC, et al., :
8 Defendants :

9 * * *

10 Zoom deposition of KAITLYN O'NEILL,
11 beginning at 11:00 a.m., on Wednesday, March 23,
12 2022, before Karen A. Stevens, Court Reporter and
13 Notary Public, there being remotely present:

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17
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19
20
21 LEXITAS
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23 Suite 118
Wayne, PA 19087
888-267-1200
24

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16
17 VIDEO TECHNICIAN: Blair Zielke

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1 I N D E X

2 * * *

3 WITNESS: Kaitlyn O'Neill

4 QUESTIONED BY:

PAGE

5 Mr. Baird

4

8 E X H I B I T S

9 * * *

11 NUMBER

DESCRIPTION

MK'D.

12 (None marked.)

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* * *

9 KAITLYN O'NEILL,
10 after having been first duly sworn, was
11 examined and testified as follows:

* * *

BY MR BATRD:

14 Q Miss O'Neill. My name is Graham Baird. I
15 represent Colleen Behm in a lawsuit she filed
16 against Mack Trucks. Today we are here for your
17 deposition. My understanding is you were present
18 for Mr. Kerchner's first deposition; is that
19 correct?

20 A Correct.

21 Q Okay. Do you need me to go through the
22 instructions that I gave Mr. Kerchner?

23 A No, I don't think so.

24 | Q Okay. Have you ever given deposition

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1 testimony before?

2 A No.

3 Q Okay. Have you ever testified in court
4 before in a matter involving Mack Trucks?

5 A No.

6 Q Can you describe for me your educational
7 background, Miss O'Neill?

8 A I have a high school diploma, a Bachelor's
9 Degree and a Master's Degree.

10 Q What discipline is your Bachelor's Degree
11 in?

12 A Business Administration.

13 Q Where did you obtain that degree?

14 A Penn State University.

15 Q In State College?

16 A No. At the Berks Campus.

17 Q Okay. When did you get that degree?

18 A I graduated in 2011.

19 Q Where did you obtain your Master's Degree?

20 A Also Penn State University, World Campus.

21 Q When did you obtain that Master's Degree?

22 A I believe I finished that program in 2015.

23 Q That's one instruction that I'll give to
24 you. We don't want you to guess, but if you feel

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1 comfortable making an estimate as to time or
2 distance or, you know, something of that nature,
3 that's fine. Okay? Just let me know you're making
4 an estimate. Okay?

5 A Yes, okay.

6 Q I have the feeling you're making somewhat
7 of an estimate on that 2015 year, correct?

8 A Correct, yes.

9 Q What discipline is that Master's Degree
10 in?

11 A Organizational Development and Change.

12 Q Do you have any other certifications?

13 A I do. I have a labor certification, a
14 human resources certification and I am pending a
15 diversity and inclusion certification.

16 Q Where did you obtain the HR certification
17 from?

18 A Michigan State University.

19 Q When did you get that?

20 A That was completed in 2020.

21 Q Tell me about that certification. What
22 did you need to do to obtain that?

23 A It was online learning and there was a
24 roughly eight-week program and every week there was

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1 learning and testing on it. And then there was a
2 final exam as well to pass to get the certificate.

3 Q Do you remember when you took that final
4 test to obtain that certification?

5 A I do not.

6 Q Do you know, is there a specific or proper
7 name for that certification?

8 A Certified Human Resources Specialist.

9 Q Are you currently employed?

10 A Yes.

11 Q Who do you work for?

12 A Mack Trucks.

13 Q How long have you worked for Mack Trucks?

14 A This will be year five. I started in
15 November of 2017.

16 Q When you were first hired by Mack Trucks
17 in November of 2017 what was your position?

18 A I was hired as an HR coordinator.

19 Q What does an HR coordinator do? What did
20 an HR coordinator do at the time you were hired?

21 A I supported the HR business partners, I
22 would yield employee questions, run reports,
23 paperwork, multiple things. But mostly roles that
24 would support anything that the HR director or HR

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1 business partners or labor manager may need.

2 Q Have you held any other positions with
3 Mack Trucks?

4 A Just my current role of HR business
5 partner.

6 Q What does an HR business partner do?

7 A Deals with employee relations, workforce
8 planning, recruitment, succession planning.

9 Anything our team support would need with questions,
10 counseling, anything along those lines. It's very
11 broad.

12 Q Is there a specific location or department
13 where you're assigned as the business partner?

14 A I currently am supporting our IT group,
15 our production quality group, vehicle one finish,
16 both first and second shift, I support our final
17 department, all three shifts, Mack defense and CAC.

18 Q What is Mack defense?

19 A That is our facility that is building
20 trucks for the military.

21 Q What is CRC?

22 A CAC.

23 Q I'm sorry.

24 A It's customer adaptation center.

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1 Q What's that center do?

2 A It's a very small group that does special
3 work on trucks for very specific items that
4 customers have requested.

5 Q How many other business partners share the
6 assignment that you are currently assigned to?

7 A Do you mean in the groups that I
8 specifically support?

9 Q Yes.

10 A It is just me. The other HR business
11 partners have other groups.

12 Q How many employees are you currently
13 supporting, give or take?

14 A It has to be close -- I'm going to
15 estimate anywhere between possibly 800 to a thousand
16 right now.

17 Q Do you have any assistants?

18 A No.

19 Q There are no HR coordinators who support
20 you?

21 A No.

22 Q Who do you report to?

23 A The HR director, Tim Newman.

24 Q Do you have an office?

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1 A I share an open concept space with my
2 peers.

3 Q Okay. Your peers are the other business
4 partners; is that right?

5 A Correct.

6 Q Where is that open concept shared space
7 located?

8 A It is in the front of the Macungie
9 facility on the first floor.

10 Q Are you responsible for fielding
11 complaints of sexual harassment?

12 A Yes.

13 Q Have you ever fielded a complaint of
14 sexual harassment directly from an employee?

15 A Yes.

16 Q Have you ever fielded a complaint of
17 sexual harassment from a union rep speaking on
18 behalf of an employee?

19 A Yes.

20 Q How many times have you fielded a sexual
21 harassment complaint directly from an employee, not
22 through their union rep?

23 A To be honest, I don't know that I have a
24 number on that. I would really have to dig through

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1 notes or files. I don't have a number.

2 Q But there would be a way to find that out
3 if you were requested to do so?

4 A Yes.

5 Q Okay. Sitting here today, if you can't
6 make an estimate, that's perfectly fine, just let me
7 know. But sitting here today would you say that has
8 happened to you more than 10 times?

9 A I honestly cannot say.

10 Q Same questions as to someone complaining
11 through their union rep. Can you say how many times
12 you have fielded sexual harassment complaints from a
13 union rep speaking on behalf of someone else to you?

14 A That I would say would be the more
15 frequent process. It's more frequent to come from
16 the supervisor or the union rep.

17 Q Okay. Do you know how many times you have
18 fielded complaints or received complaints of sexual
19 harassment from a union rep or supervisor talking on
20 behalf of another employee?

21 A Without taking time to look, I don't know
22 the number.

23 Q Did Miss Colleen Behm ever make a
24 complaint directly to you regarding sexual

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1 harassment?

2 A No, she did not.

3 Q Did Miss Behm ever make a complaint of
4 sexual harassment through her union rep, to your
5 knowledge?

6 A Not to my knowledge.

7 Q It's my understanding given the documents
8 that I've reviewed in this case that you had some
9 interaction with Miss Behm during her employment
10 with Mack Trucks; is that right?

11 A Correct.

12 Q Okay. Did Miss Behm ever complain to you
13 about anything involving Cruz Rivera?

14 A She did not.

15 Q Has any employee at Mack Trucks ever made
16 any complaints to you about Cruz Rivera?

17 A Not that I can recall.

18 Q Do you know who Cruz Rivera is?

19 A I do.

20 Q Is he currently employed with Mack Trucks?

21 A Yes, he is.

22 Q Do you know what his role is at Mack
23 Trucks?

24 A He is currently an acting union rep.

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1 Q Does he also have another
2 production-related job that he performs, to your
3 knowledge?

4 A While they are a working union rep they do
5 not perform any type of work on the line. They are
6 just strictly the rep. So right now it would just
7 be his representative role.

8 Q How often would you say you interact with
9 Mr. Rivera in his role as a union rep?

10 A It is almost daily. If not, maybe twice a
11 week.

12 Q Do you ever interact with Mr. Rivera
13 outside of work?

14 A No.

15 Q Have you ever interacted with Miss Behm
16 outside of work?

17 A No.

18 Q I am going to share my screen with you,
19 Miss O'Neill, and ask you to review some documents
20 and I will have some questions about these
21 documents. Okay? For each document I will identify
22 them by their Bates number.

23 A Okay.

24 Q For the purpose of the deposition. Bear

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1 with me a minute. This is a document that is marked
2 as Mack 1420, 1421 and 1422. This is a document
3 that was produced by Mack Trucks for this lawsuit.
4 Miss O'Neill, do you recognize this document?

5 A I do.

6 Q Can you tell me what this is?

7 A This is a report from an investigator that
8 we had look into for Colleen.

9 Q Do you know who the investigator is?

10 A This specific agent that they're referring
11 to, no. The coordinator, I forget his name, but
12 there was one person that we spoke to about details.

13 Q Do you know who that person is?

14 A I am drawing a blank on his name.

15 Q Okay. When you used the term we, who do
16 you mean by we?

17 A The company.

18 Q Okay. Now, did you ask that this report
19 be provided?

20 A Provided for today?

21 Q No. Just in the course of looking into
22 Miss Behm did you ask for this report or ask for the
23 investigation?

24 A Okay. We had been made aware by employees

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1 that they believed Colleen to be engaging in
2 activities outside of work while she was on a leave.
3 And I asked my boss if we should proceed with
4 something like this and it was approved, so we moved
5 forward.

6 Q Okay. And your boss is Tim Newman,
7 correct?

8 A Correct.

9 Q So is it fair to say that you and Tim
10 Newman had discussions about whether to investigate
11 Miss Behm's activities while she was out on a leave?

12 A Yes.

13 Q Did anybody else -- was anybody else
14 involved in those conversations?

15 A Possibly John Tolame, who was the labor
16 manager at the time, but I'm not a hundred percent
17 confident.

18 Q What does a labor manager do?

19 A They are a person that works very closely
20 with the union representatives. They would be
21 someone present at negotiations when they happen and
22 they handle higher level union items, such as
23 grievance levels three or higher, arbitration, high
24 level labor items.

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1 Q What kind of information did you receive
2 concerning Miss Behm's activities while she was out
3 on a leave?

4 A It was stated that there were reports of
5 her working at a strip club and, yeah, just that she
6 was working at a strip club, but they weren't sure
7 which one.

8 Q And where did that information come from?

9 A That information came from Kevin
10 Fronheiser, who was the shop chair.

11 Q Do you know where he obtained that
12 information?

13 A If my memory serves me right, from the
14 shop floor and that was it.

15 Q From other employees in the shop floor?

16 A Correct.

17 Q Okay. If you want, you can look at this
18 surveillance report. Just tell me. I'll do this as
19 best I can. Tell me if I need to scroll up or down
20 so you can read it. If you're aware of the contents
21 of it and you don't need to read it again to answer
22 questions, that's fine too.

23 A As I look at it I believe I'm pretty
24 familiar with it.

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1 Q Thank you. Did this report corroborate
2 any of Mr. Fronheiser's information that he
3 provided?

4 A Can you rephrase that for me? I'm not
5 sure I understand.

6 Q Well, Mr. Fronheiser informed I believe
7 you -- let's start there. Did Mr. Fronheiser tell
8 you directly that Miss Behm was, according to him,
9 working at a strip club?

10 A Yes.

11 Q Did this report that you had requested
12 corroborate any of that information?

13 A We went with -- when he said that it was
14 reported that she was working at a strip club he
15 provided us what he thought was the name of it and
16 we provided that to the agent services. But beyond
17 that we didn't have much detail and none of this was
18 shared with Kevin after it was done.

19 Q Did the investigator see Miss Behm
20 performing any work at all outside of -- during her
21 leave time?

22 A According to the report, no.

23 Q According to the report, the agent was
24 parked outside of Miss Behm's home, correct?

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1 A Correct.

2 Q Did you ever have any other conversations
3 with Mr. Fronheiser about whether Miss Behm was
4 working at a strip club?

5 A No.

6 Q Do you know why Mr. Fronheiser was
7 providing you with this information that he had come
8 by?

9 A The reason or motive as to why he shared
10 that with me, I don't know.

11 Q Okay. I'll stop sharing my screen for a
12 moment. Do you recall an incident where Miss Behm
13 was injured at work?

14 A I heard about it afterwards when it had
15 been reported with medical.

16 Q My understanding is that that injury
17 occurred sometime in mid May of 2019. Does that
18 sound right to you?

19 A That does sound fairly accurate, yes.

20 Q I know that you were present for my
21 client's deposition where she testified that she had
22 hit her head working in or around one of the cabs.
23 Do you remember that?

24 A Yes.

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1 Q Without getting into the medical diagnosis
2 of my client, is that your understanding what had
3 happened, she hit her head?

4 A That was what medical had stated in the
5 report.

6 Q Okay. Do you know whether Miss Behm had
7 left work on the date that she had hit her head
8 while working on the line?

9 A Without looking at a report or a system I
10 couldn't say a hundred percent.

11 Q Okay. Bear with me a minute. I'm going
12 to share my screen again. Miss O'Neill, I'm going
13 to show you a string of E-mails identified as Mack
14 812, 813 and 814. You were involved in some of
15 those E-mails and some of these E-mails you were not
16 involved in. Okay? Let's take a look at Mack 0813.
17 I think what we are going to have to do is start at
18 the bottom of these E-mails and go up, because that
19 keeps them in chronological order. I'd ask you to
20 take a look at this and tell me to scroll up as you
21 are reading. Fair enough?

22 A Yep.

23 Q Thank you.

24 A Okay, you can scroll. Okay. Okay. All

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1 right. Is there anything else?

2 Q That's it. So if we start at the bottom
3 E-mail, this is an E-mail from Diane King to you and
4 Dee Markell. Do you see that?

5 A Uh-huh, yes.

6 Q Who is Dee Markell?

7 A She was an HR coordinator payroll person
8 for us.

9 Q Is she still employed by Mack Trucks?

10 A No, she's not.

11 Q Do you know why her employment -- she's no
12 longer employed with Mack Trucks?

13 A She took a job at another facility to be
14 closer to family.

15 Q Do you know when she did that?

16 A She left in January of 2022, so just this
17 year.

18 Q Okay. This E-mail -- who is Diane King?

19 A She works in the dispensary as an
20 assistant, slash, secretary I would call it.

21 Q Is she still employed by Mack Trucks?

22 A Yes, she is.

23 Q Here she writes to you, I spoke with
24 Michelle from employee's doctor. and I'll represent

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1 to you that the employee we are talking about here
2 is Miss Behm. She said that Brent Calhoun filled
3 out her paperwork and he initialed it. I do see the
4 initials of BC above the date. They confirmed
5 everything on their end. Did I read that correctly?

6 A Yes.

7 Q Okay. And if you look at the date of this
8 E-mail, this is around the time when Miss Behm was
9 injured and was scheduled to come back to work.
10 Would you agree with that?

11 MR. MOODY: Objection to form. Did you
12 hear me?

13 MR. BAIRD: Yes, we did.

14 MR. MOODY: Okay. I wasn't sure.

15 BY MR. BAIRD:

16 Q You can answer if you understand my
17 question, Miss O'Neill.

18 A I would say that August of 2019 is not
19 when she was injured, but when she was already out
20 of work.

21 Q Okay. You are correct about that. She
22 was injured in or around May of 2019, right?

23 A Correct.

24 Q And do you know whether Miss Behm was out

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1 of work for that entire period from mid May until
2 August 15th?

3 A She would have been out on her short-term
4 disability.

5 Q Do you know why she was out on short-term
6 disability, what her injury was?

7 A I believe from memory she was claiming
8 concussion.

9 Q And she was being treated by a
10 neurologist; is that right?

11 A I cannot confirm or deny that.

12 Q Okay. Your E-mail in response to this
13 says, I'm curious. How can we move ahead with
14 getting a second opinion done? Do you see that?

15 A Yes.

16 Q Why did you want to obtain a second
17 opinion?

18 A We were wondering why a concussion would
19 keep her out of work for such an extended time.

20 Q Are you referring to Mack Trucks when you
21 say we?

22 A Yes.

23 Q Okay. Then the next E-mail in response to
24 yours is from Gloria Pesola. Can you tell me who

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1 that is?

2 A She -- I would call her our Workers' Comp
3 case manager.

4 Q Did Miss Behm make a Workers' Compensation
5 claim associated with her concussion?

6 A When she reported to medical stating that
7 she hit her head on the cab, medical would
8 automatically go through the process of filing a
9 Workers' Comp claim, which they did.

10 Q Do you know whether Miss Behm was ever
11 paid Workers' Compensation benefits?

12 A She was not, because the claim was denied.

13 Q Do you know why the claim was denied?

14 A From the report that I had read and been
15 made aware of, it was due to not following up with
16 the required steps for going to an in-network
17 doctor.

18 Q So going back to this E-mail, Miss Pesola
19 says, Hi Kaitlyn. It would take a while to get a
20 second opinion from a neuro specialist. Also,
21 concussions are so subjective that I'm not sure we
22 would get a favorable opinion anyway, due to the
23 subjectivity of the diagnosis, et cetera. My
24 thoughts are to get surveillance on her to see what

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1 she's doing on a personal level. If she's going to
2 a second job, getting paid, et cetera, that would be
3 grounds for termination. Did you take any action in
4 response to Miss Pesola's E-mail?

5 A If I look at the dates and trying to
6 recall what we just looked at with the surveillance,
7 I believe they're around the same time.

8 Q I'll represent to you that the
9 surveillance report was done, according to the
10 report, on September 28, 2020. That's when it was
11 authored.

12 A So it was much later. Okay.

13 Q Yeah.

14 A But I think with this we just simply
15 followed through with the second opinion.

16 Q Your reply to Miss Pesola is, I know she's
17 modeling but it's no -- if she is getting paid for
18 it. She could be charging money or she may not be.
19 Okay. Now, how did you know that Miss Behm was
20 modeling at this time?

21 A I believe it was around the time that
22 Kevin had said about her working at a strip club
23 that I did a Google search. I found her online
24 account and the photos were visible.

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1 Q Do you know what website she was hosting
2 the photos on?

3 A Instagram.

4 Q Then Dr. Muto says, I am not sure it is
5 significant that she is being paid. To me it's the
6 activity she is engaged in. And Miss Pesola says,
7 Agreed. So looking at this thread of E-mails, did
8 you take any other action with regards to Miss Behm
9 other than to procure a second opinion from a
10 neurologist?

11 A No.

12 Q At this time were you skeptical as to
13 whether Miss Behm was injured?

14 A This with the reports of her working at a
15 strip club and then finding the photos, we were
16 starting to wonder what her condition was.

17 Q Okay. Were there any (inaudible) on the
18 photos that you looked at with regards to the
19 Instagram account?

20 A Sorry, what was that?

21 Q It's kind of a clumsy question. I'm going
22 to try to make it as understandable as I can. Could
23 you identify looking at her Instagram accounts when
24 the photographs were taken or posted?

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1 A Yes. On Instagram it does put dates. It
2 might say posted seven days ago or I believe on
3 Instagram if it's over a week out they give you the
4 very specific date. So, yes, it was very easy to
5 identify when things were posted.

6 Q And that's as to when the photographs were
7 posted, correct?

8 A Correct.

9 Q Okay. Is it your testimony that it's
10 around this time in August of 2019 that
11 Mr. Fronheiser had come to you with information
12 about Miss Behm working at a strip club?

13 A I do not remember the specific time of
14 year or date when Mr. Fronheiser brought it to my
15 attention. I don't know when it was.

16 Q Did you ever make any notes from that
17 conversation with Mr. Fronheiser?

18 A I do not believe I did. I would have to
19 look.

20 Q Okay. Did you ever receive information
21 from any other sources besides Mr. Fronheiser and
22 looking on Google as to Miss Behm's activities
23 outside of work?

24 A From my memory, no.

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1 Q Did you ever contact Miss Behm to ask her
2 if she was working at a strip club?

3 A I did not.

4 Q Did you ever talk to Miss Behm about her
5 modeling?

6 A I believe it came up in conversation when
7 I had to contact her about I believe it was
8 incomplete short-term disability paperwork, A and S
9 paperwork, or something along the lines that maybe
10 needed more detail and it went into discussion.

11 Q Okay. Prior to receiving this information
12 about -- from Kevin Fronheiser and reviewing Miss
13 Behm's Instagram account, were there any other
14 reasons why you were skeptical about her injury or
15 the amount of time she was on leave?

16 A We -- myself talking to Dr. Muto I had
17 asked for his professional opinion on how long
18 someone with a concussion might be out of work and
19 we -- him and I, Dr. Muto and I, we were starting to
20 wonder why a concussion would have kept her out of
21 work from May through August or beyond.

22 Q Okay. If I understand you, it was -- you
23 had had conversations with Dr. Muto about the amount
24 of time that Miss Behm was out with regards to a

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1 concussion and whether a concussion would require
2 someone to be out of work that long. Is that fair
3 to say?

4 A Correct.

5 Q Do you remember with any level of
6 specificity as to what Dr. Muto said to you about
7 his opinion regarding the length of time someone
8 would be out with a concussion?

9 A I don't remember the specifics of the
10 conversation.

11 Q Do you remember anything generally about
12 that conversation?

13 A Honestly, no. It's been so long ago.

14 Q And was Miss Behm being paid during this
15 period of leave from May until August?

16 A Yes.

17 Q How was she being paid?

18 A A and S payment. So it's partial, not
19 full pay. It's partial.

20 Q A and S is accident and sickness, correct?

21 A Correct.

22 Q Is that a benefit directly from Mack
23 Trucks or is that a benefit provided by Mack Trucks
24 through an insurance company?

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1 A Accident and sickness benefit is
2 negotiated and part of the benefit contract between
3 the union and the company.

4 Q Okay. Do you have any knowledge as to
5 Dr. Muto's specialty or credentials?

6 A I do not.

7 Q All right. Bear with me a moment. I'm
8 going to go to another E-mail. This is Mack 830.
9 This is an E-mail from you to John Tolame, Gloria
10 Pesola and Alan Muto, dated August 29, 2019. Do you
11 see that?

12 A Yes.

13 Q This E-mail says, Hello. I was just
14 wondering if we can find a closer neurologist for
15 Colleen Behm to see. I feel that having to send an
16 employee all the way down to Jenkintown,
17 parenthesis, Greater Philly area, parenthesis, is
18 just difficult. Is there not someone in the Lehigh
19 Valley that we can get her in with? Also, what
20 happens when I call and speak with Colleen about us
21 having set up a second opinion doctor appointment
22 for her and she refuses to go? What do we do? Did
23 I read that correctly?

24 A Yes.

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1 Q Is this -- does this E-mail reference the
2 second opinion that we were discussing earlier?

3 A It does.

4 Q What was the purpose in obtaining a second
5 opinion from your perspective?

6 A I believe it would have came from the
7 conversation with Dr. Muto on his professional
8 opinion about how long someone typically would be
9 out of work for a concussion and could return back
10 and work, but then also from -- with talking with my
11 boss and John Tolame about should we move ahead with
12 a second opinion to see if we could get her back to
13 work.

14 Q Do you ever -- do you know whether you
15 ever had a phone call with Colleen about setting up
16 a second opinion for her to go see another
17 neurologist?

18 A Once we had the appointment confirmed for
19 the second opinion, yes, I did call her about it.

20 Q Did the second opinion neurologist, was
21 that a person in Jenkintown as referenced in this
22 E-mail or was someone found closer to the Lehigh
23 Valley?

24 A The second opinion specialist was in

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1 Jenkintown, Pennsylvania.

2 Q Okay. Sitting here today do you remember
3 anything that you talked with Colleen about when you
4 asked her to go see another neurologist for a second
5 opinion?

6 A I said to her we were company paying for
7 her to go see a specialist because we are trying to
8 get her the resources that she may need to recover
9 from her injury and we wanted to work with her and
10 give her resources.

11 Q Okay. Did she say anything in response to
12 that?

13 A I truly do not remember what her response
14 was.

15 Q Was she angry with you on the phone?

16 A Most conversations with Colleen there was
17 a little bit of shortness, but I don't know that she
18 was angry, yelling.

19 Q Did she refuse or agree to go see the
20 second opinion doctor?

21 A I know she did not agree with me on the
22 phone and I believe she said she was going to reach
23 out to her union rep before she made a decision.

24 Q Do you know who her union rep was at that

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1 time?

2 A I do not know.

3 Q Do you know whether she eventually went to
4 go see the second neurologist?

5 A She did.

6 Q Did that neurologist provide you an
7 opinion?

8 A They did, yes.

9 Q Do you remember what that opinion said,
10 your recollection? The report will speak for
11 itself, but do you remember what it said?

12 A It said they did not find anything that
13 would have her limited to not being able to perform
14 work and their professional opinion was that she was
15 okay and they essentially gave her no restrictions.

16 Q So the second opinion that you retained
17 from the neurologist in Jenkintown, that
18 doctor released Miss Behm to return to work without
19 restriction. Is that fair to say?

20 A Correct.

21 Q And was that return -- did Miss Behm
22 return to work immediately after that second
23 opinion?

24 A Yes.

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1 Q Did you have any conversations with
2 Miss Behm about her return to work from the
3 concussion injury after that second opinion was
4 provided?

5 A I remember the day of her appointment with
6 the second opinion she had called me and said, I'm
7 ready to come back to work, and I said, That's
8 great. Once we get the release from the doctor
9 officially we'll let you know when you should come
10 in, see medical to get your -- to be cleared and
11 then we'll get you your assignment. And I believe
12 she showed up the very next day.

13 Q I'm going to ask you to look at another
14 E-mail. This E-mail is identified as Mack 0839. Do
15 you see that?

16 A Yes.

17 Q This E-mail is dated March 4, 2020 from
18 you to Alan Muto, Gloria Pesola and Kathy Shiffert,
19 CC Richard Schmidt. Do you see that?

20 A Yes.

21 Q Can you tell me who Kathy Shiffert is?

22 A She's a nurse of ours.

23 Q Does she work in the dispensary?

24 A She does.

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1 Q Who is Richard Schmidt?

2 A He is our manpower coordinator. That's
3 the best title I can give you.

4 Q Is Mr. Schmidt -- at this time was
5 Mr. Schmidt responsible in making sure that the
6 staffing levels at the factory were appropriate and
7 there were people there to work?

8 A That's not his primary responsibility.
9 His primary responsibility as a manpower coordinator
10 is to insure the correct -- or handling all of the
11 contractual moves. That's what he is responsible
12 for and then he will let us know if we need more
13 people, where his gaps are.

14 Q Is he a union representative or in the
15 union?

16 A No, he's not.

17 Q This E-mail from you says, Hello. I just
18 wanted to start an E-mail communication to share
19 that Colleen had mentioned to people that if she
20 goes on and(sic) shift she will apply for A and S,
21 as she doesn't want to be working that shift. She
22 already has missed seven days of work since
23 2/14/2020 right when she went to second shift. And
24 I know you sent her home today due to headache and

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1 pills she takes. I'd like us to be careful and
2 monitor what, quote, illnesses, quote, she's
3 claiming, as I think she may try anything to get out
4 of working second shift. Regards, Kaitlyn. I read
5 that correctly?

6 A Yes.

7 Q Who were the people that Colleen had
8 mentioned that she does not want to go on second
9 shift?

10 A If my memory serves me correctly, it was
11 her supervisor, Arven Curtis at the time, that said
12 he had heard this from her peers in that work area.

13 Q Did you say Urvan Curtis?

14 A Arven, A-R-V-E-N.

15 Q Thank you. Did you hear that from anyone
16 else besides Mr. Curtis?

17 A I do not believe so.

18 Q Do you remember anything about that
19 conversation with Mr. Curtis?

20 A Not more than she just wasn't able or
21 wanting to work on second shift.

22 Q Do you know why Miss Behm was moved to
23 second shift?

24 A Yes. In February of 2020 we had a large

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1 general layoff and we laid off I think the number
2 was roughly 220 employees. So that had
3 significantly affected who was working where and
4 with it being a seniority shop, her seniority was no
5 longer able to hold her shift, due to all of the
6 movements and large reduction in workforce.

7 Q So it's your recollection Miss Behm was
8 moved to second shift as the result of a layoff and
9 attendant staffing needs that were required as a
10 result of that layoff. Is that fair?

11 A Correct.

12 Q Did Miss Behm ever tell you directly that
13 she did not want to be on second shift?

14 A No.

15 Q Did she ever tell you that she had some
16 childcare issues that made her employment on second
17 shift a hardship to her?

18 A I do not recall that she did.

19 Q Did she ever report to you that she had
20 been assaulted by her husband?

21 A I don't believe she directly did. I
22 believe the way I had learned of that was by seeing
23 the A and S paperwork that was submitted back in
24 2019.

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1 Q Is there a reason why you put the word
2 illnesses in quotation marks in this E-mail?

3 A Yes. Because A and S is for accident and
4 sickness and if she was stating to her peers that
5 she did not want to work second shift, that would
6 not be an illness or accident.

7 Q Okay. But if she was suffering from some
8 kind of injury or illness, that would be covered
9 under A and S, correct?

10 A Correct.

11 MR. MOODY: Objection to form. Mr. Baird,
12 are we getting close to taking a quick break?

13 MR. BAIRD: Sure, let's take a break for
14 10 minutes.

15 * * *

16 (Whereupon, a brief recess was taken.)

17 * * *

18 BY MR. BAIRD:

19 Q Miss O'Neill, I'm going to share my screen
20 and ask you about some more E-mails. Bear with me a
21 minute. This E-mail is marked as Mack 0848. This
22 is from Alan Muto to you and John Tolame, carbon
23 copying Miss Pesola and Miss Shiffert. This says,
24 John, we were just notified that Colleen Behm,

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1 parenthesis, 450939, parenthesis -- is that number
2 an employee number for Miss Behm?

3 A Yes. We call it an SAP number.

4 Q Okay -- is scheduled to return to work
5 2/16/21. It appears that she's been out of work
6 since 5/12/2019. Is that accurate?

7 A That date I believe -- that date matches
8 one of her A and S paperwork, but she was would not
9 have been able to have been out that long on A and
10 S. You only get 52 weeks on A and S.

11 Q In fact, Miss Behm had returned to work in
12 September of 2019; is that right?

13 A If my memory serves me right, yes.

14 Q She returned after the neurologist
15 provided the second opinion and cleared her to
16 return to work, correct?

17 A Correct.

18 Q The next sentence says, Her A and S
19 paperwork varies from WR to predominately NWR. Do
20 you know what those abbreviations stand for?

21 A I believe work-related to
22 non-work-related.

23 Q Okay. She was referred to Dr. Shipkin for
24 a second opinion at our request. Miss O'Neill, to

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1 your knowledge is Dr. Shipkin the neurologist she
2 saw in Jenkintown?

3 A Yes.

4 Q He determined on September 17, 2019 that
5 she was completely resolved and could return to work
6 full duty. However, I do not see that she ever
7 returned to work. I am also unaware if she is on or
8 has been approved for long-term disability. Colleen
9 was hired January 2nd, 2018. She first went out of
10 work around August 13th, 2018 until November 8th,
11 2018, then December 5th, 2018 she again went out of
12 work until January 18, 2019. She then went out of
13 work May 13, 2019 to present. Therefore, a rough
14 calculation indicates that she has worked
15 approximately one year out of three. It appears
16 that she hasn't worked long enough to develop any
17 skills. Please review and discuss what would be our
18 next step. Miss O'Neill, do you have any knowledge
19 as to what Dr. Muto was looking at to give him the
20 idea that Miss Behm had never returned to work since
21 May of 2019?

22 A I do not know what he would have been
23 looking at.

24 Q Did you ever reply to this E-mail, to your

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1 knowledge?

2 A Off the top of my head, no, I don't know
3 if I did. I might have.

4 Q Okay. I'm going to have you look at
5 another E-mail, marked as Mack 0849. This is an
6 E-mail -- well, I'll ask you to look at this and
7 tell me when you're ready to talk about it.

8 A (Witness complies.)

9 A Okay.

10 Q Can you tell me what this is? Is this an
11 E-mail or is this something else?

12 A This looks like it would have been a Skype
13 incident message communication back and forth
14 between myself and Diane King.

15 Q Okay. Do you know what date this occurred
16 on?

17 A I do not.

18 Q There was a reference in an earlier E-mail
19 about I think Miss King telephoning Colleen Behm's
20 doctor about some paperwork. Do you remember that
21 E-mail?

22 A About -- is that in the first one you had
23 shown me?

24 Q Yes, it was.

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1 A About the signature.

2 Q Right.

3 A Okay.

4 Q If you don't know, that's perfectly fine,
5 but can you tell me if this conversation was related
6 to that earlier E-mail, where Miss King telephoned
7 Colleen's doctors to find out about some paperwork,
8 do you know?

9 A I truly do not know.

10 Q All right. I'm going to have you look at
11 another E-mail. Okay. I'll share my screen again.
12 This E-mail is marked Mack 0968. Miss O'Neill, can
13 you look at this and I'll have a couple questions
14 for you?

15 A Okay.

16 Q This is an E-mail thread between you and
17 Daniel Daly. Is that right?

18 A Yes.

19 Q Who is Mr. Daly.

20 A He's the second shift business team
21 leader.

22 Q Is that a position within the HR
23 department for Mack Trucks?

24 A No. That is an operations role.

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1 Q And you had E-mailed him on February 25th
2 of 2020 saying, Hi, Dan. Just a heads up that
3 Colleen Behm called out again today taking her to
4 six points. She also called me again today asking
5 about why her Article Nine wasn't approved. She is
6 claiming that she has more seniority over people on
7 first. What is an Article Nine?

8 Q Article Nine is a section of the contract
9 that is transfer of shift.

10 Q When you are saying that Miss Behm is
11 asking about why her Article Nine wasn't approved,
12 can you tell me what you are -- what you remember
13 about that conversation with Miss Behm?

14 A I don't remember the specific
15 conversation.

16 Q Do you know what about Article Nine
17 requires approval or denial?

18 A You have to have more seniority than the
19 least senior person on the shift you want to go to
20 within your department and classification.

21 Q Okay. Did you have any access to
22 documents or computer files which would indicate to
23 you who has more seniority or not within the union?

24 A I have access to it, but I do not go in

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1 there and I don't work with it. That is Richard
2 Schmidt's area of business and expertise.

3 Q All right. Did you have any knowledge
4 around this time in February of 2020 as to whether
5 Miss Behm had more seniority or less seniority over
6 people on first shift?

7 A Specifics it would take for me to sit and
8 look at it. But I do know at this time this was the
9 week where the layoff was happening and the exercise
10 had been done with all the employees affected about
11 where their new assignments would be, which is when
12 she was moving to second shift.

13 Q During this phone call did she mention any
14 issues with regards to childcare and any
15 interference that would have about second shift?

16 A I do not recall.

17 Q Okay. The next sentence you wrote, So
18 she -- since she is at six points who knows what she
19 will try to claim injury-wise in work or out of work
20 to get placed out completely. Can you tell me
21 whether you're -- let me ask it this way. Is there
22 any reason that you believed Miss Behm would try to
23 claim an injury where one does not exist at this
24 time?

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1 A Just that her history of being in and out
2 of work and knowing that she wanted to Article Nine
3 back to first shift. Other than that, that would
4 have just been our knowledge.

5 Q If you discover or Mack Trucks discovers
6 an employee committing fraud as to the A and S
7 program, that would be grounds for termination of
8 that employee, correct?

9 A Correct.

10 Q Have you ever terminated any employee for
11 committing fraud as to the A and S program, to your
12 recollection?

13 A Yes.

14 Q Was Miss Behm ever terminated as a result
15 of committing fraud as to the A and S program?

16 A No.

17 Q How many times has an employee that you
18 were involved -- strike that. How many times can
19 you remember an employee being terminated by Mack
20 Trucks as a result of fraud within the A and S
21 program?

22 A I know of the one that I dealt with
23 specifically. There was one. But I don't know,
24 without looking, how many others.

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1 Q At the time of you sending this E-mail in
2 February of 2020 Miss Behm had not been accused by
3 Mack Trucks of committing fraud, correct?

4 A Correct.

5 Q Mr. Daly replied to this E-mail and said,
6 At this point with movement to second shift, if
7 there are any people on day shift with less time
8 they are most likely temps. Do you see that?

9 A Yes.

10 Q Were there temps brought in as a result of
11 the layoff?

12 A No, there was no temporary workers brought
13 in.

14 Q Do you know what Mr. Daly is referring to
15 with regards to people on day shift with less time
16 being most likely temps?

17 A I am not well versed, but we do have what
18 we call temporary bids. So it's an X amount of
19 time, it's not a permanent position and when that
20 time is up they would move back to their, what we
21 call, home spot position.

22 Q Okay. I'm going to ask you to look at an
23 E-mail marked as Mack 0978. This is an E-mail to
24 Diane King, Dee Markell and Kathy Shiffert and I

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1 can't see who it's from. It looks like you signed
2 it, so there may be an issue with regards to the
3 copying of this document or something didn't
4 transfer over. Take a look at this, Miss O'Neill,
5 and I'm just going to have a couple questions about
6 it.

7 A Okay.

8 Q Looking at the very first E-mail where it
9 says, Hi, Kathy, and then it's signed Kaitlyn, would
10 you agree with me that you probably sent that, did
11 send that?

12 A Yes.

13 Q This appears to have been sent on
14 March 31, 2020 and it says, Hi, Kathy. Can you
15 please help Dee and I figure out what they are
16 trying to explain with when the condition started?
17 It's almost appearing that she was assaulted on May
18 11, 2019 and March 4th, 2020 if that is what they
19 are saying. I'm not sure that is the case, as I
20 think the new condition that Colleen is trying to
21 claim in -- that might be a typo -- is migraines, in
22 parenthesis, which she is claiming never went away
23 from her attack on May 11th, 2019. Did I read that
24 right?

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1 A Yes.

2 Q Did you ever talk to Colleen about any
3 assaults that she had been the victim of?

4 A To my knowledge, I don't think there was a
5 direct conversation about that.

6 Q And when you refer to "they" in this
7 E-mail are you referring to Miss Behm and her
8 doctors or her doctor's office, do you know, or
9 can't you remember?

10 A I would think I was referring to the
11 doctor's office. Did Miss Behm ever present you
12 with documents regarding court appearances that she
13 was attending for protection from abuse orders?

14 A If she did it would have been at an
15 attendance meeting.

16 Q Okay. Do you know whether court
17 appearances are excused under the Mack Trucks
18 attendance policy?

19 A Under the Mack Trucks attendance policy it
20 is excused if you are subpoenaed.

21 Q Okay. At the time of this E-mail was it
22 your belief that Miss Behm was making up medical
23 issues because she did not want to be on second
24 shift?

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1 A This E-mail was for clarification, because
2 corporate won't process something with that far back
3 of a date. So this was clarification on the actual
4 condition to insure that we could process the A and
5 S.

6 Q I'm sorry, Miss O'Neill, your last answer
7 came through garbled at the beginning. Can you say
8 that again? I'm sorry.

9 A Sure. This communication in the E-mail
10 here, this was asking for clarification, because
11 when we send A and S paperwork to be processed for
12 payment they need specific and recent dates for
13 proper processing to not cause errors. And if we
14 were given dates from a year out we would have had
15 issues. So that E-mail was just to get
16 clarification on the condition and the start date of
17 it.

18 Q So it's your testimony, then, that at this
19 time you did not believe Miss Behm was making up
20 medical conditions, correct?

21 A Correct. Because we weren't sure what she
22 was stating on the paperwork, as it had many
23 different dates and conditions.

24 Q Was Miss Behm's employment terminated by

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1 Mack Trucks?

2 A No. Colleen Behm resigned herself.

3 Q Did you have any conversation with her
4 about her resignation?

5 A No. She submitted her resignation via
6 E-mail directly to me.

7 Q Did you have any exit meeting with her?

8 A No.

9 Q Have you had any conversations with her
10 since the time of her resignation?

11 A Shortly after her time of resignation I
12 remember she E-mailed me asking about when her
13 vacation payout would be. But beyond that there was
14 no other conversation since.

15 Q I'll share my screen again. I'd like you
16 to look at another E-mail. This is Mack 1175. This
17 is an E-mail from Dee Markell to you, dated
18 April 1st, 2020. It says, Hi, Kaitlyn. I was just
19 checking to see if you got a response on the A and
20 S. I'm doubting the will call the doctor -- I think
21 Miss Markell is saying she will call the doctor, but
22 neither here nor there -- as this is on their share
23 point. And then there is -- appears to be some kind
24 of chart here, graph or spreadsheet input into the

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1 E-mail. Do you see that?

2 A Yes.

3 Q Do you know where that spreadsheet comes
4 from?

5 A I do not. I've never seen this before,
6 like that file or that chart.

7 Q Okay. Under Other there is a blue circle
8 in ink and it says, OOW migraine. I interpret that
9 to say out of work migraine. Then in red it says,
10 Do not call. Do you see that?

11 A Yes.

12 Q Have you ever seen anything like that
13 before?

14 A No.

15 MR. MOODY: Mr. Baird, you broke up on the
16 start of that. What number are we looking at?

17 MR. BAIRD: Sorry, Randy. That's 1175.

18 MR. MOODY: No worries. We are dealing
19 with technology.

20 BY MR. BAIRD:

21 Q I think I have one more for you, Miss
22 O'Neill. This one is going to be Mack 1202. Do you
23 see this document, Miss O'Neill?

24 A Yes, I do.

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1 Q Can you tell me what this is?

2 A This is an instant message Skype
3 conversation between myself and Kevin Fronheiser.

4 Q You write, Hey, can you please have a
5 conversation with Colleen Behm that she needs to
6 remain professional and polite during her
7 communication with us? If she continues to interact
8 in a rude way I will discipline her for harassment.
9 I'm trying to work with her as professionally as I
10 can, but her inappropriate tone and rude manner is
11 not needed or appropriate. Did I read that
12 correctly?

13 A Yes.

14 Q Do you remember what Miss Behm did to
15 prompt this communication to Mr. Fronheiser?

16 A It would have been a time when I called
17 her on the phone. What I called her, or if she
18 called me, a phone conversation happened. Specifics
19 of it I don't necessarily recall. But as I stated
20 before, many times when Colleen would be
21 communicating with me it wasn't far from rude,
22 short, just inappropriate, yeah, tone. It was very
23 frequent anytime we would communicate that she would
24 be short or, you know, rude with me.

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1 Q To your recollection, that was her tone
2 and general manner in her communications with you.
3 Is that fair?

4 A Yes.

5 Q Did she ever use profanity with you?

6 A In an E-mail, I don't believe so. On the
7 phone, I can't remember many of the specifics of the
8 conversations, so I cannot say yes or no.

9 Q Did you ever write up Miss Behm for any
10 inappropriate communications with you?

11 A No, I did not.

12 Q Bear with me, Miss O'Neill. I have to
13 find one other document. This document is Mack
14 1179, 1180. It's a two-page document. Okay. This
15 is an E-mail from Miss Pesola to Patrick O'Connell.
16 Can you tell me who Mr. O'Connell is?

17 A I cannot. I don't think I know who that
18 is.

19 Q Okay. You are not carbon copied on this
20 E-mail, correct?

21 A Correct.

22 Q Dr. Muto, Miss Shiffert and Miss King are
23 carbon copied on this. And this is of high
24 importance from Miss Pesola. Just wanted you to see

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1 what we received today on Colleen Behm, WC390E11428.

2 Do you know what that number means or?

3 MR. MOODY: I lost sound.

4 MR. BAIRD: Okay. He doesn't hear us.

5 let's go off the record.

6 * * *

7 (Whereupon, a brief off-the-record
8 discussion was held.)

9 * * *

10 BY MR. BAIRD:

11 Q We'll start over. This one is Mack 1179
12 and 1180. Miss O'Neill, you're not copied on this
13 E-mail. Do you see that?

14 A Yes.

15 Q It says, Just wanted you to see what we
16 received today on Colleen Behm. WC390E11428. Does
17 that number mean anything to you?

18 A That I believe would be her Workers' Comp
19 case number.

20 Q Okay. It says, I know this claim is
21 denied. However, I wanted you to be aware that on
22 her most recent A and S form, which is attached, she
23 has checked that this sickness, slash, injury is due
24 to her employment with the company. Also look at

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1 the complaints listed on the bottom of this form.

2 Ellipses, hostile work environment, harassment, et
3 cetera. Did I read that correctly?

4 A Yes.

5 Q Then it says, Please advise if we need to
6 do anything or discuss with Tony Salvino. Do you
7 know who Mr. Salvino is?

8 A I believe he's the Workers' Comp attorney.

9 Q All right. Then this is the form, to my
10 knowledge, that's attached as Mack 1180. It does
11 have some writing down below referencing, Never
12 cleared to return to work. Hostile work
13 environment, harassment, discrimination, sexism,
14 targeting HIPAA violations, victimization, unfair
15 treatment and emotional distress, causing increase
16 in anxiety and migraines. Did I read that
17 correctly?

18 A Yes.

19 Q Did you ever take any investigation into
20 what Miss Behm was referring to here?

21 A When I saw this page of the A and S I
22 don't recall specifically when I saw it, but as soon
23 as I saw it I reached out to her supervisor, her
24 current one and her previous one, and asked if she

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1 had ever mentioned anything. They said they were
2 not aware. I also reached out to Kevin Fronheiser,
3 because I wasn't sure who her union rep was. I
4 asked Kevin if she had ever brought anything to his
5 attention, and he said no, he had not heard of
6 anything. So I did pretty much instantly ask for
7 any information that someone would have had on this
8 and nothing came of it. No one had anything.

9 Q Did you reach out to Miss Behm about this?

10 A I don't know that I did.

11 Q Do you know whether you did or not?

12 A A hundred percent I don't know. I'd have
13 to look.

14 Q Okay. Where would you look to determine
15 whether you had reached out to Miss Behm in
16 reference to what she had written on the paper?

17 A I would check E-mails, our investigation
18 files. I would look in those areas.

19 Q Okay. When you reached out to
20 Mr. Fronheiser did he discuss with you who Miss
21 Behm's union representation was at that time?

22 A I don't recall that he did.

23 Q Do you remember which supervisors you
24 spoke with to investigate what Miss Behm had written

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1 down on this paper?

2 A I had reached out to Arven Curtis and I'm
3 blanking on who the other supervisor would have
4 been, but I know Arven Curtis was I believe the
5 first person I had asked.

6 Q During your employment with Mack Trucks
7 can you remember any other instances in which you
8 obtained surveillance on an employee utilizing the A
9 and S program?

10 A Yes. The case where we did terminate
11 employment for fraud essentially for the person
12 claiming it.

13 Q Okay. Was that the reason for termination
14 with regards to that person? Was it fraud or is
15 there another word that was used by Mack?

16 MR. MOODY: Objection to form. You can
17 answer.

18 THE WITNESS: I believe the word would
19 have been fraud, because in the contract it
20 states. So, yes, I believe that would be the
21 term we used.

22 BY MR. BAIRD:

23 Q Do you remember who that person was who
24 was terminated?

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1 A I know the first name is Paul. I don't
2 remember the last name.

3 Q Do you remember when that employee was
4 terminated?

5 A 2018.

6 Q Were there any other employees that you
7 can think of who you had obtained surveillance on
8 for any reason besides Paul and Miss Behm?

9 A I did not request -- I did request the
10 surveillance on another employee on A and S, Fawn
11 Owenberg.

12 Q F-A-W-N?

13 A Yes.

14 Q Was Fawn terminated?

15 A No.

16 Q Does Fawn still work for Mack Trucks?

17 A Yes.

18 Q Is she on A and S currently?

19 A I would have to look.

20 MR. BAIRD: That's all the questions I
21 have, Miss O'Neill. I appreciate your time.

22 Mr. Moody may have some follow-up questions for
23 you.

24 MR. MOODY: I don't have any questions for

Kaitlyn O'Neill - March 23, 2022

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1 you, Miss O'Neill. Everyone have a great day.

2 THE COURT REPORTER: Do you both want
3 copies?

4 MR. BAIRD: Yes.

5 MR. MOODY: I'll take copies and she will
6 read and sign.

7 * * *

8 (Witness excused.)

9 * * *

10 (Whereupon, the Zoom deposition concluded
11 at 12:45 p.m.)

12 * * *

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Kaitlyn O'Neill - March 23, 2022

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1 C E R T I F I C A T I O N

2
3
4 I, Karen A. Stevens, a Court Reporter
5 and Notary Public, do hereby certify the
6 foregoing to be a true and accurate transcript
7 of the proceedings in this matter, as
8 transcribed from the stenographic notes taken
9 by me.



10
11
12
13
14 Karen A. Stevens
15 Court Reporter
16 Notary Public

17
18
19
20 (The foregoing certification of this
21 transcript does not apply to any reproduction
22 of the same by any means, unless under the
23 direct control and/or supervision of the
24 certifying reporter.)

Kaitlyn O'Neill - March 23, 2022

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INSTRUCTIONS TO WITNESS

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6 Read your deposition over carefully. It is
7 your right to read your deposition and make changes
8 in form or substance. You should assign a reason in
 the appropriate column on the ERRATA SHEET for any
 change made.

9

10

11 After making any change in form or
12 substance, and which have been noted on the
 following ERRATA SHEET, along with the reason for
 change, sign your name on the ERRATA SHEET and date
 it.

13

14

15

16 Then sign your deposition at the end of
17 your testimony in the space provided. You are
 signing it subject to the changes you have made in
 the ERRATA SHEET, which will be attached to the
 deposition before filing. You must sign in the
 space provided. The witness need not be a Notary
 Public. Any competent adult may witness your
 signature.

19

20

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24

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1 SIGNATURE PAGE

2 OF

3 KAITLYN O'NEILL

4

5 I hereby acknowledge that I have read the
6 foregoing deposition dated March 23, 2022, and
7 that the same is a true and correct
8 transcription of the answers given by me to the
9 questions propounded, except for the changes,
10 if any, noted on the attached ERRATA SHEET.

11

12 SIGNATURE

13

14

15 _____
Kaitlyn O'Neill

16

17 _____

18 WITNESSED BY: DATE

19

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21

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24

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From: [Pesola Gloria \(Consultant\)](#)

Mail received time: Fri, 16 Aug 2019 15:20:47

Sent: Fri, 16 Aug 2019 15:20:46

To: [Muto Alan \(Consultant\)](#) [O'Neill Kaitlyn King Diane](#)

Cc: [Ptolemy John](#)

Subject: RE: RE: Colleen Behm A&S

Importance: Normal

Sensitivity: None

Agreed

From: Muto Alan (Consultant) <alan.muto@consultant.volvo.com>

Sent: Friday, August 16, 2019 8:22 AM

To: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>; Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>; King Diane <diane.king@volvo.com>

Cc: Ptolemy John <john.ptolemy@volvo.com>

Subject: RE: RE: Colleen Behm A&S

I am not sure it is significant that she is being paid. To me it is the activity she is engaged in.

Alan Muto, D.O.

Attending Physician

Mack Trucks Health Center

Mack Trucks

Health Center

7000 Alburtis Road

Macungie, PA 18062

Telephone: 610-966-8878

Email: alan.muto@consultant.volvo.com



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From: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>

Sent: Friday, August 16, 2019 8:14 AM

To: Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>; King Diane <diane.king@volvo.com>

Cc: Ptolemy John <john.ptolemy@volvo.com>; Muto Alan (Consultant) <alan.muto@consultant.volvo.com>

Subject: RE: RE: Colleen Behm A&S

I know she is modeling but it's known if she is getting paid for it. She could be charging money or she may not be.

From: Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>

Behm v. Mack Trucks, et al.

MACK0812

JA000615

Sent: Friday, August 16, 2019 8:13 AM

To: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>; King Diane <diane.king@volvo.com>

Cc: Ptolemy John <john.ptolemy@volvo.com>; Muto Alan (Consultant) <alan.muto@consultant.volvo.com>

Subject: RE: RE: Colleen Behm A&S

Hi Kaitlyn:

It will take a while to get a 2nd opinion from a neuro specialist. Also, concussions are so subjective, that I am not sure we would get a favorable opinion anyway due to the subjectivity of the diagnosis, etc. My thoughts are to get surveillance on her to see what she is doing on a personal level. If she is going to a 2nd job, getting paid, etc. that would be grounds for termination.

Thoughts everyone?

Thanks,
Gloria

From: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>

Sent: Thursday, August 15, 2019 10:13 AM

To: King Diane <diane.king@volvo.com>

Cc: Ptolemy John <john.ptolemy@volvo.com>; Muto Alan (Consultant) <alan.muto@consultant.volvo.com>; Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>

Subject: RE: RE: Colleen Behm A&S

I'm curious, how can we move ahead with getting a second opinion done?

Kaitlyn

From: King Diane <diane.king@volvo.com>

Sent: Thursday, August 15, 2019 10:06 AM

To: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>; Markell Dee <dee.markell@volvo.com>

Subject: RE: Colleen Behm A&S

Spoke with Michelle from EE's doctor. She said that Brent Calhoun filled out her paperwork and he initialed it. I do see the initials of BC above the date, they conformed everything on their end.

Diane King
Administrative Medical Assistant
Mack Trucks Health Center

Mack Trucks
Health Center
7000 Alburtis Road
Macungie, PA 18062
Telephone: 610-966-8878
Email: Diane.King@volvo.com



From: [Ptolemy John](#)

Mail received time: Fri, 10 May 2019 15:57:38

Sent: Fri, 10 May 2019 15:57:37

To: [Pesola Gloria \(Consultant\)](#)[Newman Timothy \(d\)](#)

Cc: [Muto Alan \(Consultant\)](#)

Subject: RE: Restrictions for Colleen Behm Attached

Importance: Normal

Sensitivity: None

Gloria,

Maria and Annette are coming over to take her over to maintenance.

Hopefully we can sort this out.

John

-----Original Message-----

From: Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>

Sent: Friday, May 10, 2019 9:48 AM

To: Newman Timothy (d) <timothy.d.newman@macktrucks.com>

Cc: Muto Alan (Consultant) <alan.muto@consultant.volvo.com>; Ptolemy John <john.ptolemy@volvo.com>

Subject: RE: Restrictions for Colleen Behm Attached

Tim:

As expected she is giving us a major problem going back to work. She is here with her union rep. States she was told by ER to stay home & rest and she has a migraine and does not want to be around noise or lights.

I think we need someone from HR here to speak with her and her union rep. She called Dr. Muto a veterinarian and talked about me when I wasn't in the room, etc.

Thanks,
Gloria

-----Original Message-----

From: Newman Timothy (d) <timothy.d.newman@macktrucks.com>

Sent: Friday, May 10, 2019 9:26 AM

To: Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>

Subject: Re: Restrictions for Colleen Behm Attached

Drew Kuhn

Sent from my iPhone

> On May 10, 2019, at 9:25 AM, Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com> wrote:

>

> Ok, Tim. Thank you. Where and who (supervisor) should she report to?

>

> Thanks,

> Gloria

From: [O'Neill Kaitlyn](#)

Mail received time: Thu, 29 Aug 2019 18:22:07

Sent: Thu, 29 Aug 2019 18:22:06

To: [Ptolemy John Newman Timothy \(d\)](#)

Cc: [Pesola Gloria \(Consultant\)](#) [Muto Alan \(Consultant\)](#)

Subject: 2nd opinion Dr - C.Behm

Importance: Normal

Sensitivity: None

Hello

I was just wondering if we can find a closer neurologist for Colleen Behm to see? I feel that having to send an employee all the way down to Jenkintown (greater Philly area) is just difficult. Is there not someone in the Lehigh Valley area that we can get her in with?

Also, what happens when I call and speak with Colleen about us having set up a 2nd opinion dr appt for her and she refuses to go, what do we do?

Kaitlyn O'Neill, CLRL

Mack Trucks, Inc

Human Resources Business Partner

Phone: 610-966-8016

Mobile: 610-390-2766

Email: kaitlyn.oneill@volvo.com

From: [O'Neill Kaitlyn](#)

Sent: Wednesday, March 4, 2020 7:57:54 PM

To: [Muto Alan \(Consultant\)](#) [Pesola Gloria \(Consultant\)](#) [Shiffert Kathy](#)

Cc: [Schmidt Richard](#)

Subject: Colleen Behm

Importance: Normal

Sensitivity: None

Hello

I just wanted to start an email communication to share that Colleen had mentioned to people that if she goes on and shift she will apply for A&S, as she doesn't want to be working that shift.

She already has missed 7 days of work since 2/14/2020 (right when she went to 2nd shift) and I know you sent her home today due to headache and pills she takes.

I'd like us to be careful and monitor what "illnesses" she is claiming as I think she may try anything to get out of working 2nd shift.

Regards,

Kaitlyn

Sent via the Samsung Galaxy S9, an AT&T 5G Evolution capable smartphone

[Get Outlook for Android](#)

From: [Muto Alan \(Consultant\)](#)

Sent: Friday, February 5, 2021 8:55:23 AM

To: [Ptolemy John O'Neill Kaitlyn](#)

Cc: [Shiffert Kathy Pesola Gloria \(Consultant\)](#)

Subject: Colleen Behm

Importance: Normal

Sensitivity: None

John,

We were just notified that Colleen Behm (450939) is scheduled to RTW 2/16/21. It appears she has been OOW since 5/12/2019. Her A&S paperwork varies from WR to predominately NWR. She was referred to Dr. Shipkin for a second opinion at our request, He determined on 9/17/2019 that she was completely resolved and could RTW full duty. However, I do not see that she ever returned to work. I am also unaware if she is on or been approved for LTD. Colleen was hired 1/2/2018. She first went OOW around 8/13/2018 until 11/8/2018 then 12/5/2018 she again went OOW until 1/18/2019. She then went OOW 5/13/2019 to present. Therefore, a rough calculation indicates that she has worked approximately one year out of three. It appears that she hasn't worked long enough to develop any skills. Please review and discuss what would be our next step.

Alan Muto, D.O.

Attending Physician

Mack Trucks Health Center

Mack Trucks

Health Center

7000 Alburstis Road

Macungie, PA 18062

Telephone: 610-966-8878

Email: alan.muto@consultant.volvo.com



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From: [O'Neill Kaitlyn](#)
To: [King Diane O'Neill Kaitlyn](#)
Subject: Conversation with King Diane
Importance: Normal
Sensitivity: None

O'Neill Kaitlyn 8:38 AM:

Hi Diane

I was wondering if you or someone else there in medical can call the doctors office on Colleen Behm's paperwork that Dee just emailed us about. We think it's slightly suspicious with handwriting and fax numbers. I would like to know if they had recent communication from Colleen requesting updated paperwork or not.

King Diane 8:42 AM:

Kaitlyn I will speak to Gloria reg. this. Will let you know the outcome

O'Neill Kaitlyn 8:42 AM:

okay thank you

King Diane 8:42 AM:

no problem

From: [Daley Daniel](#)

Sent: Tuesday, February 25, 2020 5:45:22 PM

To: [O'Neill Kaitlyn](#)

Subject: RE: Colleen Behm

Importance: Normal

Sensitivity: None

At this point with the movement to 2nd shift, if there are any people on dayshift with less time, they are most likely temps.

Dan

From: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>

Sent: Tuesday, February 25, 2020 3:19 PM

To: Daley Daniel <daniel.daley@volvo.com>

Subject: Colleen Behm

Hi Dan

Just a heads up that Colleen Behm called out again today – taking her to 6 points.

She also called me again today asking about why her article 9 wasn't approved - she is claiming that she has more seniority over people on first.

So she since she is at 6 points who knows what she will try to claim injury wise in work or out of work to get placed out completely. We'll just need to monitor her

Kaitlyn O'Neill, CLRL

Mack Trucks, Inc

Human Resources Business Partner

Phone: 610-966-8016

Mobile: 610-390-2766

Email: kaitlyn.oneill@volvo.com

Sent: Tuesday, March 31, 2020 12:58:01 PM
To: [King DIaneMarkell DeeShiffert Kathy](#)
Subject: RE: colleen Behm A&S
Importance: Normal
Sensitivity: None

Hi Kathy,

Can you please help Dee and I figure out what they are trying to explain with when the condition started. It's almost appearing that she was assaulted on 5/11/19 and 3/4/2020, is that what they are saying? I'm not sure that is the case as I think the new condition that Colleen is trying to claim in migraines and anxiety (which she is claiming never went away from her attack on 5/11/2019).

Can we ask the doctor to clarify better and to initial when they make updates to the paperwork?

Kaitlyn

-----Original Message-----

From: King DIane <diane.king@volvo.com>
Sent: Tuesday, March 31, 2020 12:15 PM
To: Markell Dee <dee.markell@volvo.com>; Administration Macungie Human Resources <Adm.macungiehr@volvo.com>
Cc: O'Neill Kaitlyn <kaitlyn.oneill@volvo.com>
Subject: colleen Behm A&S

Here is another copy of Colleen Behm's ;paperwork.

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Diane King
Administrative Medical Assistant
Mack Trucks Health Center

Mack Trucks
Health Center
7000 Alburtis Road
Macungie, PA 18062
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Email: Diane.King@volvo.com

-----Original Message-----

From: Diane King <diane.king@volvo.com>
Sent: Tuesday, March 31, 2020 12:08 PM
To: King DIane <diane.king@volvo.com>
Subject: Message from "RNP002673F1572B"

From: Markell Dee
Sent: Wednesday, April 1, 2020 2:54 PM
To: O'Neill Kaitlyn
Subject: Colleen Behm status?

Hi Kaitlyn,

I was just checking to see if you got a response on the A&S....
I am doubting the will call the doctor.

As this is on their Share point.

NAME	SAP #	REASON	Category	DX Code	FDA	EST. RTW per PCP	MD Guidelines - Median RTW Date	Actual RTW	Transitional Duty Start Date	OTHER
BEHM, COLLEEN	450939	MIGRAINE	Gynecological	G44.219 G43.009	5/11/2019	6/7/2020				OOW MIGRAINE DO NOT CALL

Best Regards,
Dee Markell
HR Coordinator
Human Resources

Mack Trucks / Lehigh Valley Operations
7000 Alburtis Road
Macungie, PA 18062

Phone: 610-966-8837
Mobile: 484-793-5860
Email: dee.markell@volvo.com



From: Pesola Gloria (Consultant)
Sent: Wednesday, March 18, 2020 1:58 PM
To: O'Connell, Patrick J
Cc: Pesola Gloria (Consultant); Muto Alan (Consultant); Shiffert Kathy; King Dlane
Subject: Colleen Behm WC390E11428
Attachments: 20200318131412285.pdf

Importance: High

Hey Pat:

Just wanted you to see what we received today on Colleen Behm WC390E11428. I know this claim is denied; however, I wanted you to be aware that on her most recent A&S form which is attached she has checked that this sickness/injury is due to her employment with the company. Also, look at the complaints listed on the bottom of this form....hostile work environment; harassment, etc.

Please advise if we need to do anything or discuss with Tony Salvino. I know that our HR team will be reaching out to their employment law attorney as well.

Thank you,
Gloria

-----Original Message-----

From: Gloria Pesola <gloria.pesola@consultant.volvo.com>
Sent: Wednesday, March 18, 2020 1:14 PM
To: Pesola Gloria (Consultant) <gloria.pesola@consultant.volvo.com>
Subject: Message from "RNP002673F1572B"

This E-mail was sent from "RNP002673F1572B" (MP C3504ex).

Scan Date: 03.18.2020 13:14:12 (-0400)

HR. 3/18/2020

SHORT TERM DISABILITY BENEFIT CLAIM FORM

ANY ATTEMPT TO ALTER, MISLEAD OR FALSIFY REQUESTED INFORMATION WILL RESULT IN SEVERE DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION

PART A

EMPLOYEE'S STATEMENT

All Questions Must Be Completed by Employee - Claim Form Must Be Returned By:

Full Name Colleen Sara Behm		Badge# 450939	Social Security Number 188-170-4810	Date of Birth 05/22/1989
Address Street 216 Halsey Ave		City or Town West Lawn	State PA	Zip 19609
If accident occurred, give Date 3/01/2019		Is the sickness or injury due to your employment with the Company? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", give full particulars in space provided below, or on separate sheet. + in space below		
Describe in Space Provided Below Scalp rash				
Is the sickness or injury due to your employment with another employer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If, Yes, give full particulars below.		
Were you employed by another employer (full or part-time) when disability commenced? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If Yes, give full particulars below and name of employer.		
First day you did not perform any work because of disability MARCH 4 2020 + left over early		Date you were first treated by physician in present disability 20	If recovery has occurred, give date 20	

AUTHORIZATION TO RELEASE INFORMATION

To all physicians and other medical professionals, hospitals and other medical-care institutions, and to insurers, medical or hospital service and prepaid health plans, employers and group policyholders, claim adjustors or benefit plan administrators.

You are authorized to provide the Company with information concerning medical care, advice, treatment or supplies provided the patient, and any other employment related information regarding the patient. THIS INFORMATION WILL BE USED FOR THE PURPOSE OF EVALUATING AND ADMINISTERING CLAIMS FOR BENEFITS AND MAY BE REDISCLOSED TO AN INDEPENDENT CLAIMS ADMINISTRATOR OR AGENCY ACTING ON THE BEHALF OF THE COMPANY AND TO ANY COMPANY WORKERS' COMPENSATION CARRIERS FOR THE PURPOSE OF EVALUATING A WORKERS' COMPENSATION CLAIM.

I understand that the duration of the authorization is for the term of coverage of the policy or contract under which a claim for health benefits has been submitted.
I understand that I have a right to receive a copy of this authorization upon request. I agree that a photographic copy of this authorization is as valid as the original.
If I receive a disability benefit payment greater than that which should have been paid, I understand that the Company has the right to recover such overpayment from me, including the right to reduce future disability benefits, if any; or to recoup such overpayment by withholding monies from any Company compensation that would otherwise be due me.

MARCH 5 2020



ANY EMPLOYEE WHO ENGAGES IN GAINFUL EMPLOYMENT WHILE ON A SICK LEAVE MAY BE SUBJECT TO DISCIPLINARY ACTION, UP TO AND INCLUDING DISCHARGE.

IMPORTANT - Attending Physician must complete reverse side of this form.

** Procedure upon return from sick leave**

If you are returning to work with medical restrictions, you must report to the Medical Department for placement. If you return without medical restrictions, please forward your work release to your Supervisor and the Human Resources Service Center.

PART B EMPLOYER'S STATEMENT

Full Name of Employee				Social Security Number
Employee Date of Hire	Was coverage in force When disability began 20	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Occupation	
Was employee laid off or was lay off contemplated prior to beginning of this disability? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If "Yes" Give date 20	Did the sickness or injury arise out of the Employee's employment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes" state reasons in space provided below why Workers' Compensation is not payable. Employee must complete Reimbursement Agreement.		
Are there any circumstances which would cause you to question the validity of the claim? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If "Yes" give reasons in space provided below		Hourly rate Or monthly salary	Amount of weekly A & S benefit
List Employee withholding election for federal taxes (e.g., M-1)	List Holidays paid during sick leave		List number of Occasional sick days used this year	
Date Employee was first placed from work in present disability 20	Date work was resumed 20			
Date _____ Employer Representative _____				
Additional Space for Employee/Employer Use (Attach additional sheets for more information) NEVER Cleared to return to work, Hostile work environment, harassment, discrimination, sexism, targeting, hipaa violations, victimisation, unfair treatment, emotional distress Causing increase in anxiety and migraines				

From: O'Neill Kaitlyn
Sent: Wednesday, March 25, 2020 12:04 PM
To: Fronheiser Kevin; O'Neill Kaitlyn
Subject: Conversation with Fronheiser Kevin

O'Neill Kaitlyn 11:38 AM:

hey can you please have a conversation with COleen Behm that she needs to remain professional and polite during her communication with us? if she continues to interact in a rude way i will discipline her for harassment. i'm trying to work with her as professionally as i can but her inappropriate tone and rude manner is not needed or appropriate

Fronheiser Kevin 11:54 AM:

ya she got that way with me too

O'Neill Kaitlyn 11:55 AM:

like i'm trying to work with her as best i can but the rude behavior with everyone is just not appropriate now or ever

Fronheiser Kevin 11:57 AM:

i hear you and thank you

O'Neill Kaitlyn 11:57 AM:

no problem. it's not like we are trying to be difficult but just trying to stay consistent and follow processes

Fronheiser Kevin 11:59 AM:

i know its crazy



September 28, 2020

SURVEILLANCE REPORT

Subject: Colleen Behm

Surveillance Date(s): 09/24/20; 09/25/20; 09/26/20

DAY 1 – Thursday, September 24, 2020

2:00 p.m. Agent departs office for West Lawn, Pennsylvania.

3:15 p.m. Agent arrives at 216 Halsey Avenue in West Lawn.

Upon arrival, there are no vehicles observed in the driveway of the residence.

3:40 p.m. Agent departs for the subject's suspected place of employment, Utopia Cabaret, located at 395 West Benjamin Franklin Highway in Douglassville.

4:15 p.m. Agent arrives at Utopia Cabaret in Douglassville. Upon arrival, the subject's vehicle is not observed in the parking lot of the venue.

4:30 p.m. The agent enters the establishment in search of the subject.

During the agent's time inside, the subject is not observed dancing or working in any capacity.

5:26 p.m. The agent exits the establishment and departs for 216 Halsey Avenue.

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5531 Memorial Road • Allentown PA 18104 • Tel 610.821.9112

Email: worldwideci@verizon.net • www.confidentialinv.com

5:56 p.m. The agent returns to the subject's residence located at 216 Halsey Avenue. Upon arrival, the agent observes a green Toyota RAV4 parked in the street near the residence, but the subject's vehicle is not present. The agent sets up surveillance at a nearby location.

6:35 p.m. The agent drives past the subject's residence and observes her vehicle, a grey Nissan Rogue (PA Lic. No: #KCF-3202) parked in the driveway.

7:05 p.m. No further activity is observed. Surveillance is terminated.

8:15 p.m. Agent returns to the office.

Total Hours Day 1: 6.25 Hours

Total Mileage Day 1: 126.6

Total Expenses Day 1: \$30.75

Day 2 – Friday, September 25, 2020

5:00 p.m. Agent departs for West Lawn, Pennsylvania.

6:15 p.m. Agent arrives at 216 Halsey Avenue in West Lawn. Upon arrival, the subject's grey Nissan Rogue (PA Lic. No: KCF-3202) is observed parked in the driveway of the residence.

6:20 p.m. A female fitting the subject's description exits the front door of the residence with three children, a boy and a girl, appearing to be 12 – 13 and 5 – 6 years old, respectively, and a toddler appearing to be approximately 2 – 3 years old. The older children are observed carrying backpacks. The female and the children remain on the front porch and in the front yard area of the residence for approximately fifteen minutes.

6:35 p.m. A black sports sedan with heavily tinted windows approaches the residence and the older children are observed picking up their backpacks and entering the vehicle. The vehicle departs the residence shortly thereafter and the female returns to the residence with the youngest child. The agent observes minimal movement within the residence over the next several hours.

10:00 p.m. No further activity is observed. Surveillance is terminated.

11:00 p.m. Agent returns to the office.

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Total Hours Day 2: 6 Hours
Total Mileage Day 2: 89 Miles

Day 3 – Saturday, September 26, 2020

6:00 p.m. Agent departs office for West Lawn, Pennsylvania.

7:20 p.m. Agent arrives at 216 Halsey Avenue in West Lawn. Upon arrival, the grey Nissan Rogue (PA Lic. No: KCF-3202) is observed parked in the driveway and lights are visible within the residence.

10:15 p.m. No additional activity is observed. The agent departs for Utopia Cabaret in Douglassville.

10:45 p.m. Agent arrives at the Utopia Cabaret and enters the establishment. It is close to last call at this time, so the agent orders food and drink before close. During his time inside, the subject is not observed dancing or working in any capacity.

11:15 p.m. Surveillance is terminated.

12:15 a.m. Agent returns to the office.

Total Hours Day 3: 6.25 Hours

Total Mileage Day 3: 104 Miles

Total Expenses Day 3: \$23.00

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In the Matter Of:

COLLEEN BEHM vs

MACK TRUCKS, INC.

CARL KERCHNER

March 23, 2022



Carl Kerchner - March 23, 2022

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 * * *

4 COLLEEN BEHM, : NO. 21-2500
5 Plaintiff :
6 vs. :
7 MACK TRUCKS, INC, et al., :
8 Defendants :

9 * * *

10 Zoom deposition of CARL KERCHNER,
11 beginning at 10:00 a.m., on Wednesday, March 23,
12 2022, before Karen A. Stevens, Court Reporter and
13 Notary Public, there being remotely present:
14
15
16
17
18
19
20

21 LEXITAS
22 999 Old Eagle School Road
23 Suite 118
Wayne, PA 19087
888-267-1200
24

Carl Kerchner - March 23, 2022

2

1 A P P E A R A N C E S :

2
3 GRAHAM BAIRD, ESQUIRE
4 LAW OFFICES OF ERIC A. SHORE
5 1500 J.F.K. Blvd., Suite 1240
6 Philadelphia, Pennsylvania 19102
7 grahamb@ericshore.com
8 -- Representing the Plaintiff

9
10 RANDY MOODY, ESQUIRE
11 JACKSON LEWIS, P.C.
12 15 South Main Street, Suite 700
13 Greenville, South Carolina 29601
14 randy.moody@jacksonlewis.com
15 -- Representing the Defendants

16 VIDEO TECHNICIAN: Blair Zielke

17
18 Also Present: Kaitlyn O'Neill

19
20
21
22
23
24

Carl Kerchner - March 23, 2022

3

1 I N D E X

2 * * *

3 WITNESS: Carl Kerchner

4 QUESTIONED BY:

PAGE

5 Mr. Baird

5

6

7

8 E X H I B I T S

9 * * *

10

11 NUMBER

DESCRIPTION

MK'D.

12 (None marked.)

13

14

15

16

17

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24

Carl Kerchner - March 23, 2022

4

1 (It is hereby stipulated by and
2 between counsel for the respective
3 parties that signing, sealing, filing and
4 certification are waived; and that all
5 objections, except as to the form of the
6 questions, be reserved until the time of
7 trial.)

8 THE COURT REPORTER: The attorneys
9 participating in this deposition acknowledge
10 that I am not physically present in the
11 deposition room and that I will be reporting
12 this deposition remotely. They further
13 acknowledge that, in lieu of an oath
14 administered in person, I will administer the
15 oath remotely, pursuant to Governor Wolf's
16 Order of March 21, 2020. The parties and their
17 counsel consent to this arrangement and waive
18 any objections to this manner of reporting.
19 Please indicate your agreement by stating your
20 name and your agreement on the record.

21 MR. BAIRD: My name is Graham Baird, for
22 the Plaintiff. I agree.

23 MR. MOODY: Randy Moody, for Defendants.
24 I agree.

Carl Kerchner - March 23, 2022

5

1

* * *

2

CARL KERCHNER,

3

after having been first duly sworn, was

4

examined and testified as follows:

5

* * *

6

E X A M I N A T I O N

7

* * *

8

THE COURT REPORTER: Are the usual
stipulations okay?

10

11

12

13

MR. BAIRD: That's fine. Only objections
as to the form of the question. The witness
can read and sign, reserve the right to if he
so desires.

14

BY MR. BAIRD:

15

Q Mr. Kerchner, good morning. My name is
Graham Baird and I'm a lawyer and I represent
Colleen Behm in a lawsuit that she's filed against
Mack Trucks. Today we are here for your deposition,
sir. Have you ever given a deposition before?

20

A No.

21

Q Who else is in the room with you where you
are?

23

A Right now it's myself and Kaitlyn O'Neill.

24

Q Okay. Is there anyone else in the room

Carl Kerchner - March 23, 2022

6

1 besides you and Miss O'Neill?

2 A No.

3 Q Do you have any electronic devices that
4 you are looking at right now besides the laptop or
5 whatever you're using to participate here on the
6 Zoom?

7 A No.

8 Q Okay. A deposition's a question and
9 answer session. I'm just going to ask you a few
10 questions that involve your interactions with Miss
11 Behm and perhaps others during your employment with
12 Mack Trucks.

13 A Okay.

14 Q And your legal obligation is to provide
15 answers to those questions to the best you can.
16 Okay?

17 A All right.

18 Q When you are responding to my question I
19 would ask that you respond verbally. Sometimes it
20 is difficult for the court reporter to take down two
21 people talking at once, so I would ask that you wait
22 until I ask my full question before you answer and
23 I'll certainly do my best not to talk over you when
24 you're answering. Is that fair?

Carl Kerchner - March 23, 2022

7

1 A Sure.

2 Q I'm hearing a little bit of feedback and
3 I'm wondering where that's coming from.

4 A We are in a small room, so that could be
5 where it's coming from.

6 Q I'll try to speak as clear as I can so
7 there is no echo. You can take a break whenever you
8 want, Mr. Kerchner, from my questions.

9 A Okay.

10 Q Just ask for one. Okay?

11 A Okay.

12 Q Don't guess at anything. If you don't
13 know, you don't know. If you don't remember, you
14 don't remember.

15 A Okay.

16 Q Don't guess or make assumptions. Do you
17 understand that?

18 A Yes, absolutely.

19 Q Terrific. If you don't hear one of my
20 questions, if you don't understand one of my
21 questions, please tell me and I will try and ask it
22 again. Okay?

23 A Okay.

24 Q If Mr. Moody, who is the lawyer for Mack

Carl Kerchner - March 23, 2022

8

1 Trucks, objects to one of my questions, don't
2 answer. Let him place his objection on the record
3 and then you can answer after he does so. Okay?

4 A Okay.

5 Q Mr. Kerchner, what is your current age?

6 A My current age is 52.

7 Q Are you employed?

8 A Yes.

9 Q Where are you employed?

10 A I am employed with Mack Trucks in
11 Macungie, Pennsylvania.

12 Q What is your current job position with
13 Mack Trucks?

14 A My current job position is production tech
15 on engine two.

16 Q What do you do as a production tech on
17 engine two?

18 A I actually do left-side transmission
19 install.

20 Q Okay. How long have you held that
21 position, sir?

22 A A couple of months.

23 Q What did you do before you were assigned
24 to that position?

Carl Kerchner - March 23, 2022

9

1 A I was the inspector at the end of the cab
2 two line.

3 Q What did you do in that position?

4 A That position is you inspect the final
5 product of the cab, do some data entry in computers
6 for defects and so on and so forth and that was
7 pretty much it.

8 Q Are you currently a member of any labor
9 union?

10 A Just the one that we have to have for
11 working here, which is UAW 677.

12 Q Okay. How long have you been employed at
13 Mack Trucks?

14 A Since September 11th of 1998.

15 Q Was Mack Trucks a union shop when you
16 started?

17 A Yes.

18 Q And was it the same Union, UAW 677, back
19 then?

20 A Yes.

21 Q Have you ever had any representative or
22 leadership roles in the union?

23 A Yes. I was a -- I actually had all three
24 cab lines. I was the union rep for all three cab

Carl Kerchner - March 23, 2022

10

1 lines and I also had the trainers.

2 Q What did you do as a union rep? Explain
3 that to me.

4 A Okay. So various roles. The first and
5 foremost is to make sure both sides, company and
6 union, follow the current contract agreement between
7 the union and the company. Further than that, it
8 goes to when I was the rep I had approximately 200
9 people that were under my district, so that can
10 entail all kinds of problems to where we need to
11 come out to HR if people need days off or
12 bereavement if somebody passed away. You know, you
13 kind of -- it's hard to sum it up in a short
14 little -- you do a lot of stuff.

15 You have a lot of interaction with
16 the people out there because, as you well know and
17 everybody else here, you have things, it's life,
18 stuff happens. And so you do a lot. You try and
19 take care of a lot of problems that arise on the
20 floor, whether it's between employees or employee
21 and supervisor or it could be a various boatload of
22 things that you have to take care of. Pay issues,
23 if their pay wasn't right we come out to HR or send
24 an E mail and say, Hey, Kaitlyn O'Neill was short

Carl Kerchner - March 23, 2022

11

1 eight hours of pay this week, things of that nature.

2 Q Okay. Did you ever serve as a union
3 representative for Colleen Behm?

4 A Yes.

5 Q Do you remember anything about any actions
6 that you took on behalf of Miss Behm or the company
7 with regards to her employment?

8 A There was I can tell you right now there
9 was three interactions with her that I can remember
10 right now. Would you like me to divulge what the
11 three were or --

12 A That's great. Please do.

13 A So one of the instances was Colleen, Miss
14 Behm, was going to be married. She was going to
15 have the service at her home, so she had required --
16 or not required, requested to have off Friday and
17 Monday to be able to set up and break down for her
18 home wedding, which her supervisor, and I do not
19 remember who the supervisor was at the time because
20 they kind of get shuffled around in here and like I
21 said I have three different lines and three sets of
22 supervisors. So long and short of it was the
23 supervisor had denied her the days off, so of course
24 when that happens then the union rep gets called,

Carl Kerchner - March 23, 2022

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1 which Colleen did call me. I came down to her,
2 asked her what was going on, had given me the
3 situation of requested days. It was going to be a
4 home wedding and she needed Friday and the following
5 Monday for setting up and breaking down of all the
6 tables and chairs and whatever else they rented for
7 their wedding.

8 So I got nowhere with the supervisor,
9 so I wound up coming out to HR, which at that time,
10 again, I don't remember if I went to the HR business
11 partner first, which I think it was, and that would
12 have been Kaitlyn at the time.

13 THE WITNESS: Were you there?

14 BY MR. BAIRD:

15 Q You can't ask for help to testify. If you
16 know, you know. If you can't remember, that's okay
17 too.

18 A Okay. Well, I came to HR, wound up
19 talking to Tim Newman about it. Tim said -- I
20 explained the situation, he says, Okay, we'll go out
21 and talk to her about it. So we did. At that time
22 she was not on my line, because she was flexed.
23 They could bounce her around. So at that time she
24 was on the chassis line. We found out where she was

Carl Kerchner - March 23, 2022

13

1 and went to talk to her. The interaction with that
2 was I said to Colleen, I've got Tim Newman here. He
3 wants to talk to you about your days off for your
4 wedding. So I stepped back and let them talk, but
5 stayed there and listened to what was going on. And
6 he told her he was going to give her the Friday and
7 Monday off with no points assessed. Because we have
8 an attendance policy with points if you call off,
9 take off, et cetera. So that's where we were at
10 with that. He told her she could have off the
11 Friday and Monday. From there I asked her if
12 everything is okay, she said yep, and I proceeded to
13 move on to take care of the rest of the things for
14 the day.

15 Q Did she thank you for helping her with
16 that first interaction?

17 A I would say probably, but I can't say a
18 hundred percent yes or no, because of the amount of
19 people and amount of content that you have to deal
20 with day after day. It kind of blurs together. So
21 for me, when I was done with her I was like just
22 okay, you know, clean slate. We are off to the next
23 person. What's the next issue?

24 Q Understood.

Carl Kerchner - March 23, 2022

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1 A That was the first interaction. I've seen
2 her like in normal cordial stuff, Good morning, how
3 you doing? Do you have any issues? But that was
4 the first real thing where she needed assistance
5 with, didn't get something that she felt she needed
6 to have off.

7 Q Do you mind if I ask you a few questions
8 about that first interaction?

9 A Sure.

10 Q You said Colleen called you. Did she call
11 you on your cell phone, personal cell phone?

12 A Again, I don't remember that, because my
13 personal cell phone, I didn't really give my number
14 out. Some people on the floor had it before I
15 became a rep, so some people would reach out to me
16 through that. I don't remember if it was a phone
17 message on my desk phone or if it was one of the
18 people on the cab line said, Hey, Colleen's looking
19 to talk to you. They have her on the chassis line.
20 I can't be a hundred percent on that one.

21 Q As I understand it there could be numerous
22 ways in which an employee could contact you as a
23 union rep to come assist them with some issue they
24 had, be it possibly your personal phone, call you on

Carl Kerchner - March 23, 2022

15

1 your desk phone or word of mouth from other
2 employees telling you that they need to talk to you?

3 A Correct.

4 Q And you said that you went to the HR. Do
5 you know, was there an HR office on site of the
6 Macungie factory?

7 A Ever since I've been employed here, yes,
8 they have been on site. It has changed over the
9 years for location, but it has always been on site.

10 Q Okay. Tell me about the location of HR
11 during that first interaction with Miss Behm.

12 A I'm pretty sure it was out here at the
13 front of the building where they are currently. I
14 don't know if this is the north side of the building
15 or not. It's the front part of the facility.

16 Q Is there a trailer or is it an office
17 within the building?

18 A Within the building, this one is an
19 office. The prior place before this was I guess a
20 trailer out there that they had made into cubicles
21 or offices out there. But it was only if you walk
22 out of the plant to the trailer it was probably less
23 than a two-minute walk, if that. It was very close
24 in proximity.

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1 Q What about the proximity of the HR office
2 as it sits now? How close is that to the factory
3 floor in terms of walking wise?

4 A You can walk right in. You can't walk
5 into the HR department, but you walk in off of the
6 production floor and come down a corridor and go to
7 the security person, let them know, I have an
8 appointment with Kaitlyn at 10 o'clock and they
9 either call or bring you back and ring you through.

10 Q Have you ever needed to call an HR
11 representative off site of the factory?

12 A I don't ever recall calling them off site.
13 Were there times where I was the rep and --

14 Q Go ahead. I'm sorry.

15 A Okay. I thought somebody said something.
16 There has been times when you're a rep they give you
17 a laptop and we were using Skype at the time for an
18 instant message thing back and forth or Kaitlyn and
19 I would do a lot either through the phone and/or
20 E-mails as well. So it all depended. If Kaitlyn
21 wasn't there she'd say, I'm not in the plant today,
22 but I'm working from home. So we did everything
23 over Skype or she would say call me on my work cell
24 phone and we'd discuss it that way.

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1 Q If you don't mind, Mr. Kerchner, can you
2 tell me about the second interaction you recall
3 involving Miss Behm?

4 A Okay. The second interaction was I was
5 requested to come to the dispensary, which is the
6 medical facility here in the plant. Colleen was
7 working on the L cab line as a flex person, wound up
8 bumping her head. I believe she went out to be
9 diagnosed by a doctor, had come back and she had
10 requested me to come along with her into the
11 dispensary because she had to see the doctor, which
12 was not uncommon for me. I've been in there with
13 various other people when I was the rep. They
14 requested that I come in. You have to sign a form
15 for the HIPAA stuff and all that protocol, which we
16 did.

17 So when we went in there we were
18 sitting in a private room waiting for Dr. Muto to
19 come in. He came in and I believe there was a nurse
20 with him. It might have been Cathy, but I can't be
21 a hundred percent sure on that. But also there was
22 two HR representatives that came in as well. One
23 was Dee Markell and the other was Marta, and I'm
24 going to butcher her last name, Albalotta I think is

Carl Kerchner - March 23, 2022

18

1 her last name. So when we were in there of course I
2 pretty much sat back and let them do their thing. I
3 sat there and observed them and if I needed to ask
4 any questions that I thought maybe she didn't ask
5 or, you know, maybe she missed something. So we sat
6 there and it was back and forth about her being able
7 to return to work.

8 Q Do you remember anything specifically
9 about that back and forth about Miss Behm being able
10 to return to work?

11 A So I don't remember the exact specifics
12 back and forth because it was a lot of -- I'm saying
13 it's a tiny room. There's an exam table in there,
14 two chairs like I'm sitting on now and a wash basin
15 type thing. It's small. So there was probably six
16 people in the room, so it was tight and people
17 talking, it was loud. All I know is it was back and
18 forth and, from what I remember, Colleen was upset
19 that they were going to have her return to work
20 because she was diagnosed with a concussion at the
21 time and I believe she was having some effects from
22 the concussion; headache, light sensitivity, all
23 that other stuff that goes with that.

24 At the end of the day, from what I

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1 can remember, can't be a hundred percent but I'm
2 like 95 percent, is they wound up letting her go
3 home that day. They sent her home. After that,
4 again the amount of people I had to deal with and
5 the volume of things, I can't tell you was she out
6 for one day, three days, five months? I'm not -- I
7 can't even be close to guessing on how long she was
8 out. I didn't monitor that stuff.

9 Q Okay. Do you remember anything about
10 Dr. Muto's examination of Colleen?

11 A No, that I do not.

12 Q Did you -- you were in the room when he
13 was examining her, though, correct?

14 A I was in the room. This was after she
15 came back from being diagnosed from somebody else.
16 So I can't be a hundred percent sure if he did
17 anything, like check to see if her pupils were
18 dilated. I can't remember.

19 Q Did you observe Miss Behm's original
20 injury?

21 A I was not there when it happened, no. I
22 was told about it after the fact.

23 Q Do you remember who told you about it?

24 A No, I do not. Somebody on the line out

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1 there, like I said, she was flex, so she could be
2 anywhere in the plant, honestly. If nobody is
3 out -- I don't know if you're familiar how flex
4 works. If there is nobody out she just goes on
5 repair and helps people out. And I can't even be
6 sure, was she on an actual job when she hit her head
7 or was she doing repair? That I don't know either.

8 Q Fair enough. What happens when someone is
9 injured while working on the line? Does the line
10 stop?

11 A Depending what kind of an injury. If you
12 have somebody that -- I don't want to be gruesome
13 here, but there's people that have been in between
14 the rear axles of the truck and they fire it up and
15 put it in gear and that person gets sucked down in
16 between the wheels. Yeah, they're going to have to
17 shut the line off. Personally myself, when I worked
18 on the cab line I turned to get out of the truck and
19 split my knee open, so I grabbed a rag and walked
20 over to the dispensary. No, they don't turn the
21 line off for that. It depends on the severity of
22 it.

23 Q And do you remember when your injury
24 occurred?

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1 A No. That was a lot of years before that.

2 Q Have you had any other injuries at work
3 besides splitting your knee open?

4 A Yeah. I had a Workman's Comp claim on my
5 elbow, which they had to do surgery on it.

6 Q Was that -- I'm sorry. Was that a
7 situation where your elbow, was that a repetition
8 injury?

9 A It wound up being tennis elbow. They had
10 to go in and reattach the ligament.

11 Q Did you miss some time from your job as a
12 result of that injury?

13 A Sure.

14 Q Do you remember about how much?

15 A No. That was even further back. That was
16 a lot of years ago.

17 Q Okay. Did Mack Trucks treat you
18 negatively as a result of you missing time from your
19 injury?

20 A As? Explain what you mean by negatively.

21 Q Did Mack Trucks take any actions against
22 you that you believed were motivated by the fact
23 that you missed time from your injury?

24 A No.

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1 Q Did Mack Trucks in any way rush you to
2 return to work?

3 A I don't know if they per se rush you.
4 There's been probably some cases where -- you talk
5 to a bunch of people as a rep. I'd say, Listen,
6 it's your body. Only you know how you feel. I
7 can't make anybody change when you come back. I
8 have nothing to do with that. All I can tell you is
9 do the job. If you can't do it you got to go back
10 down to the dispensary. They have got to make that
11 call. I can't do anything with that.

12 Q Understood. Do you remember anything that
13 Miss Behm said toward Dr. Muto or any of the other
14 individuals in the room, Dee Markell, for example,
15 during the time when she was -- when you were
16 observing her have the conversation in that
17 dispensary?

18 A I do not remember anything that was said.
19 All I can tell you is at one point it did get a
20 little heated in there between the people that were
21 involved in there. As of what was said back and
22 forth, I have no recollection of anything that was
23 said back and forth besides Dr. Muto at the end
24 saying, Okay, fine, we are going to send you back

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1 home. And that was pretty much the end of it.

2 Q Do you remember who was getting heated in
3 the room?

4 A I know Colleen was upset. I don't recall
5 really if Dr. Muto or the nurse -- like I said,
6 there was so much going on in there, it's a very
7 small room and as we are talking here you know if we
8 have a couple people talking, you don't catch it
9 all. It's just noise at that point. I'm not saying
10 they were full out screaming or nothing. It was
11 just from talking it was a lot of noise.

12 Q Understood. Do you ever remember Colleen
13 referring to Dr. Muto as a veterinarian during that
14 interaction?

15 A No, I can't remember her saying anything
16 of that.

17 Q Have you ever heard Colleen refer to
18 Dr. Muto as a veterinarian?

19 A Again, I cannot be a hundred percent yes
20 or no. When you're a rep you talk so much during
21 the day. There is so much content. Like I said,
22 there's 200 people, so there is no way I can tell
23 you yes or no.

24 Q When you say there's 200 people, are there

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1 200 people that you are the representative for?

2 A Yes. At that time, yes, there was like
3 200 and change, maybe 210, give or take. Because
4 people would bounce in and out with bids and getting
5 moved and flex people and all that other stuff.

6 Q At that time you were the union rep for
7 the cab lines; is that correct?

8 A Yes. And that was district two.

9 Q Okay. What is the third interaction that
10 you had with Miss Behm?

11 A The third interaction was after my term
12 was over as the rep I decided not to re-run and I
13 was going to go back to my job in production. So
14 when I would walk down through my job in production
15 I would see Colleen in the morning. And because I
16 was her rep we had a rapport, so it was always, Good
17 morning. How you doing? And she stopped me as I
18 was walking to my work station and she says, Can you
19 believe they're going to force me -- or she said,
20 I'm going second shift. I said, Oh, is that -- did
21 you Article Nine? Because I know she had kids and
22 she was going through some stuff outside of work.
23 And she's like, No. They're forcing me to go second
24 shift. I said, Yeah, but if they force you to go on

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1 second shift it's not a permanent thing. When
2 people get bumped around they Article Nine from
3 shift to shift.

4 I said, With your time you got enough
5 time. You'll probably eventually get back on first
6 shift. You're just going to have to buy your time
7 on second shift. That was just being cordial back
8 and forth. Even to this day, I've been out of being
9 a rep for five years now. I still have people come
10 and talk to me on the line to ask me questions.
11 It's just -- that's part of that territory.

12 Q Sure.

13 A Other than that, I believe that was
14 probably the last time I talked to Colleen besides,
15 How you doing, or walking past her. Other than
16 that, that was the last interaction I had with her.

17 Q During that interaction were you still her
18 union rep or had you stopped being the union rep at
19 that time?

20 A I was done being the rep. Like I said, I
21 was walking to my work station. And for three
22 years, for most of those three years I was a rep, I
23 was on that floor every day walking those lines to
24 make sure there was no issues going on. You built a

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1 rapport with those people because you're there all
2 the time. So I was absolutely not her rep at that
3 time. And I remember that because where she was
4 working because she was flex, they had her over
5 there. I'm like, What are you doing over here?
6 She's like, Well, they moved me over here and
7 they're making me go second shift. And that whole
8 thing played out.

9 Q Did she tell you why they were making her
10 go second shift?

11 A If she did I don't remember what the
12 reason was. I had just told her that they --
13 without being the rep and being able to dive into
14 it, I said it's probably that more seniors came to
15 this shift. You're going to get bumped. It happens
16 all the time. It's a seniority shop. That that's
17 how it goes.

18 Q Do you know who took over as Miss Behm's
19 union representative after you had stopped acting in
20 that capacity?

21 A If she would have been on the cab line, if
22 that's where she was working, that would have been
23 Cesar. I just lost his last name. His last name is
24 Gerena, G-E-R-N-N-A(sic), or something like that.

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1 He was actually my alternate when I was the standing
2 rep. He wound up running when I didn't want to run
3 and he became the actual rep for the cab lines.
4 When I seen Colleen, when I passed her going to my
5 work station, I'm pretty sure she was tied to the
6 chassis line at that time and that rep at that time
7 would have been Louie Kurtz.

8 Q Louie Kurtz, did you say?

9 A K-U-R-T-Z, yes. His actual real name was
10 Louis, but everybody called him Louie.

11 Q Did you ever any conversations with
12 Mr. Gerena or Mr. Kurtz about Colleen?

13 A No.

14 Q Did you ever have any conversations with
15 Kaitlyn O'Neill about Colleen?

16 A Again, I can't be a hundred percent just
17 because of the amount of volume. So I probably had
18 a conversation with Kaitlyn about the days off that
19 she requested for the wedding and not uncommonly the
20 HR people out here a lot of times they were straight
21 up. Listen, I can't make that call. I'm going to
22 have to escalate that to Tim. That's why I went to
23 Tim Newman about getting her off those two days to
24 be married.

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1 Q Understood. Do you know a person named
2 Cruz Rivera?

3 A I know who Cruz is. I've never worked
4 with him. Again, it's a cordial thing. I know him
5 because he's a rep up there now. I filled in for a
6 week or two. Cesar had a family emergency that he
7 had to take care of, so I wound up meeting Cruz up
8 in the union office for those two weeks when I
9 worked up there filling in for Cesar. But I never
10 really had any interactions with him. I never
11 worked with him on the line. He was never my rep, I
12 was never his rep, so that's the extent of it with
13 Cruz.

14 Q Okay. Do you know whether Mack Trucks
15 Inc. has an anti-sexual harassment policy?

16 A I'm sure there is a sexual harassment
17 policy.

18 Q Do you have any knowledge as to what that
19 policy entails, what it says?

20 A Off the top of my head, no. Is it easily
21 accessible? Absolutely. You can ask a supervisor
22 to print it for you. Some time ago there used to be
23 a revolving type thing when they had a bunch of
24 packets in there and you could go in and grab that

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1 stuff. Whenever a policy changes or anything like
2 that, Mack Trucks usually will send it out E-mail to
3 the supervisors and they would print it off and hand
4 it to the people on the line.

5 Q As a union representative did you ever
6 field any complaints that you can remember involving
7 sexual harassment at Mack Trucks?

8 A There were certain things as a rep that
9 get brought up to where people feel they weren't
10 talked to correctly or were treated some kind of a
11 way, which of course then you have to do your due
12 diligence as a rep, which I have, and Kaitlyn, have
13 sat down with a couple of them to where there was
14 people that were feeling uncomfortable from another
15 coworker. There was a couple here that we had
16 brought it out. I dealt with Marta with that one.
17 That was an engineer and a worker. But an actual
18 charge? Again, once it stops between me and an HR
19 business partner, that's pretty much where I'm done.
20 As a rep, yes, I sat through a bunch of intake
21 meetings where they ask what happened, what was
22 said, who was around. Like that was status quo. If
23 you came with something like that, they did a full
24 investigation on it.

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1 Q When you say "they" who are you speaking
2 of?

3 A HR. Sorry.

4 Q That's all right.

5 A Like I said, for me and HR I had three or
6 four different business partners, because I had
7 three different lines and the trainers. So
8 depending who it was on what line is that person who
9 I had to go to to bring the issue up or to get a
10 resolution, get an answer for her, like I said, to
11 get the days off.

12 Q Do you have any awareness of what the
13 policy is of Mack Trucks regarding how a complaint
14 of sexual harassment is raised by a line worker?

15 A I don't know what the policy says, but
16 there again as a rep, for me, and I'm speaking for
17 me, if somebody comes to you with something like
18 that you can't sit on that. You have to take it
19 where it's got to go. And that's what happened.
20 That's how I handled my district when I was the rep
21 in it.

22 Q Do you have any understanding as to
23 whether Mack Trucks directs employees to complain to
24 their union rep or can an employee complain directly

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1 to HR at Mack Trucks?

2 A I can't answer for that, because I'm not
3 part of HR. I can tell you usually if it's
4 something like that, I'm going to say, and this is
5 just my opinion, majority of the people will go to
6 the rep. I'm sure some people go to supervisors,
7 but to give you a percentage there is no way I would
8 be able to figure that out or give an educated
9 guess. There is no rhyme or reason.

10 Q Did Miss Behm ever make any complaints to
11 you about sexual harassment?

12 A No.

13 Q You mentioned Miss Behm with regards to
14 the third interaction you had with her, that she I
15 think you said was going through some stuff outside
16 of work. Do you remember that?

17 A Yeah.

18 Q Do you remember when --

19 A I think it was -- like I said, this is
20 after I was the rep. So I know she was having
21 problems with it had to have been her husband at
22 that time, because that was the issue, was I believe
23 they were separated and she didn't have anybody to
24 watch the children on second shift and that's where

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1 the issue was going to lie for her. Again, her and
2 I didn't specifically say that. Like we didn't have
3 that straight-up conversation where she was saying
4 I'm having husband or marital problems. It was
5 because I even asked her, You got kids. What are
6 you -- how are you going to handle that? And I
7 think she made the comment that she was concerned
8 because she didn't know what she was going to do
9 with them, being on second shift and trying to find
10 somebody to watch them.

11 Q Have you talked to Miss Behm outside of
12 the workplace in the last year or two years?

13 A No, sir.

14 Q Have you talked with Miss Behm's
15 ex-husband, Corey, outside work in the last year or
16 two years?

17 A No. I've never talked to that man ever.
18 I know he worked here for a little bit of time. I
19 know who he was, but he wasn't in my district, so,
20 no, I've never talked to him.

21 Q Okay. Bear with me, Mr. Kerchner.

22 A Sure.

23 Q Did you do anything to prepare for your
24 deposition today?

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1 A As in which?

2 Q Anything at all.

3 A No, not really. No.

4 Q Did you look at any documents or
5 paperwork --

6 A No.

7 Q -- in preparation?

8 A No.

9 MR. BAIRD: I don't have any further
10 questions for you, Mr. Kerchner. I appreciate
11 your time. Thank you. Mr. Moody may have some
12 questions.

13 MR. MOODY: No, I don't have any questions
14 for you today. Thank you, sir.

15 * * *

16 (Witness excused.)

17 * * *

18 (Whereupon, the Zoom deposition concluded
19 at 10:45 a.m.)

20 * * *

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2 C E R T I F I C A T I O N

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5 I, Karen A. Stevens, a Court Reporter
6 and Notary Public, do hereby certify the
7 foregoing to be a true and accurate transcript
of the proceedings in this matter, as
transcribed from the stenographic notes taken
by me.



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Karen A. Stevens
Court Reporter
Notary Public

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